RESOLUTIONS SIGNED

The President announced the signing in the presence of the Senate the following enrolled resolutions:

H.C.R. 44
H.C.R. 46
H.C.R. 47

ADJOURNMENT

On motion of Senator Brooks, the Senate at 4:14 p.m. adjourned until 9:00 a.m. tomorrow.

APPENDIX

Sent to Governor
(December 7, 1989)

S.C.R. 5
S.C.R. 6
S.C.R. 7
S.C.R. 8
S.C.R. 9
S.C.R. 10
S.C.R. 11
S.C.R. 13
S.C.R. 14
S.C.R. 15
S.C.R. 17
S.C.R. 24

SEVENTH DAY
(Tuesday, December 12, 1989)

The Senate met at 9:00 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brooks, Brown, Caperton, Carriker, Edwards, Glasgow, Haley, Harris, Henderson, Krier, Leedom, McFarland, Montford, Ratliff, Santiesteban, Sims, Tejeda, Zaffirini.

Absent: Dickson, Johnson, Lyon, Parker, Parmer, Truan, Uribe, Washington, Whitmire.

Absent-excused: Green.

A quorum was announced present.

Senate Doorkeeper Jim Morris offered the invocation as follows:

Our Father, we have been taught there is a season for everything, a time for every occupation under Heaven — a time for planting — a time for uprooting what has been planted — a time for speaking — a time for keeping silent — a time for searching — a time for building.

Today we offer thanks for all those who searched and researched, built and rebuilt these past weeks, and we pray that dedication, integrity and hard work continue as the bedrock of the Texas State Senate.

In Your name we pray. Amen.

On motion of Senator Brooks and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

LEAVE OF ABSENCE

Senator Green was granted leave of absence for today on account of important business on motion of Senator Zaffirini.

CONFERENCE COMMITTEE REPORT
SENATE BILL 1

Senator Brooks submitted the following Conference Committee Report:

Austin, Texas
December 11, 1989

Honorable William P. Hobby President of the Senate

Honorable Gibson D. "Gib" Lewis Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 1** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

BROOKS	R. SMITH
EDWARDS	EARLEY
HALEY	GAVIN
HARRIS	GIBSON
	A. SMITH
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the reform of the workers' compensation system and to the regulation of workers' compensation insurance coverage; to the creation, powers, and duties of the Texas Workers' Compensation Commission; and to work safety; establishing the Texas Workers' Compensation Insurance Facility and the Texas Workers' Compensation Research Center; making appropriations; providing criminal and administrative penalties; and providing for taxes and fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. GENERAL PROVISIONS

SECTION 1.01. SHORT TITLE. Articles 1 through 11 of this Act may be cited as the Texas Workers' Compensation Act.

SECTION 1.02. APPLICATION OF OTHER ACTS; SUNSET. (a) Except as otherwise provided by this Act:

(1) proceedings, hearings, judicial review, and enforcement of commission orders, decisions, and rules are governed by Sections 1 through 12, except Sections 4(a)(3) and 4(b), and by Sections 13, 14, 14a, 15, 17, 19, and 19A, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes);

(2) the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), applies to

all proceedings under this Act, except benefit review conferences, contested case hearings, appeals panel proceedings, arbitration, and other proceedings involving determinations on workers' compensation claims; and

(3) the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), applies to all records of the commission and the research center.

(b) The Texas Sunset Act (Chapter 325, Government Code) applies to the Texas Workers' Compensation Commission and the Texas Workers' Compensation Research Center. Unless continued in existence as provided by that chapter, the commission is abolished September 1, 2001, and the research center and the legislative oversight committee are abolished September 1, 1997.

SECTION 1.021. DISCRIMINATION PROHIBITED. Nothing in this Act shall be applied to discriminate because of race, sex, national origin, or religion. This section does not prohibit consideration of anatomical differences in application of the impairment guidelines under Article 4 of this Act in rating injuries or diseases such as, but not limited to, breast cancer or inguinal hernias. Whenever an impairment rating assigns different values to the same injury for males and females, the higher value shall be applied.

SECTION 1.03. DEFINITIONS. In this Act:

(1) "Adjuster" means a person licensed under Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code).

(2) "Administrative violation" means a violation of this Act or a rule adopted under this Act that is subject to penalties and sanctions as provided in this Act.

(3) "Agreement" means the resolution by the parties to a dispute under this Act of one or more issues regarding an injury, death, coverage, compensability, or compensation. The term does not include a settlement.

(4) "Alien" means a person who is not a citizen of the United States of America.

(5) "Benefit" means a benefit received based on a compensable injury. The term includes a medical benefit, an income benefit, and a death or burial benefit.

(6) "Certified self-insurer" means a private employer who has been granted a certificate of authority to self-insure, as authorized by this Act, for the payment of compensation.

(7) "Child" means a son or daughter. The term includes an adopted child, or a stepchild who is a dependent of the employee.

(8) "Commission" means the Texas Workers' Compensation Commission.

(9) "Commute" means to pay in a lump sum.

(10) "Compensable injury" means an injury that arises out of and in the course and scope of employment for which compensation is payable under this Act.

(11) "Compensation" means payment of medical benefits, income benefits, death benefits, or burial benefits.

(12) "Course and scope of employment" means an activity of any kind or character that has to do with and originates in the work, business, trade, or profession of the employer and that is performed by an employee while engaged in or about the furtherance of the affairs or business of the employer. The term includes activities conducted on the premises of the employer or at other locations. The term does not include:

(A) transportation to and from the place of employment unless:

(i) the transportation is furnished as a part of the contract of employment or is paid for by the employer;

(ii) the means of such transportation are under the control of the employer; or

(iii) the employee is directed in his employment to proceed from one place to another place; or

(B) travel by the employee in the furtherance of the affairs or business of his employer if such travel is also in furtherance of personal or private affairs of the employee unless:

(i) the trip to the place of occurrence of the injury would have been made even had there been no personal or private affairs of the employee to be furthered by the trip; and

(ii) the trip would not have been made had there been no affairs or business of the employer to be furthered by the trip.

(13) "Death benefit" means a payment made to a legal beneficiary for the death of an employee under this Act.

(14) "Dependent" means an individual who receives a regular or recurring economic benefit which contributes substantially to the individual's welfare and livelihood if the individual is eligible for distribution of benefits under Article 4 of this Act.

(15) "Designated doctor" means a doctor who is appointed by mutual agreement of the parties or by the commission to recommend a resolution of a dispute as to the medical condition of an injured employee.

(16) "Disability" means the inability to obtain and retain employment at wages equivalent to the preinjury wage because of a compensable injury.

(17) "Doctor" means a doctor of medicine, a doctor of osteopathic medicine, a doctor of optometry, a doctor of dentistry, a doctor of podiatry, or a doctor of chiropractic who is licensed and authorized to practice. A doctor may perform only those procedures that are within the scope of the practice for which the doctor is licensed.

(18) "Employee" means each person in the service of another under any contract of hire, whether express or implied, or oral or written. The term includes an employee employed in the usual course and scope of the employer's business who is directed by the employer temporarily to perform services outside the usual course and scope of the employer's business. The term also includes a person, other than an independent contractor or the employee of an independent contractor, who is engaged in construction, remodeling, or repair work for the employer at the premises of the employer. The term does not include a master of or a seaman on a vessel engaged in interstate or foreign commerce or a person whose employment is not in the usual course and scope of the employer's business. A person who is an employee for purposes of this Act and is engaged in work that otherwise may be legally performed is an employee despite any license, permit, or certificate violation arising under state law or municipal ordinance or violation of a law regulating wages, hours, or work on Sunday. This subdivision shall not be construed to relieve from fine or imprisonment any individual, firm, or corporation employing or performing any work or services prohibited by any statute of this state or any valid municipal ordinance.

(19) "Employer" means, unless otherwise specified, a person that makes a contract of hire, that employs one or more employees, and that has workers' compensation insurance coverage. The term includes a governmental entity that self-insures, either individually or collectively.

(20) "Health care" includes all reasonable and necessary medical aid, medical examinations, medical treatments, medical diagnoses, medical evaluations, and medical services. The term does not include vocational rehabilitation. The term includes:

(A) medical, surgical, chiropractic, podiatric, optometric, dental, nursing, and physical therapy services provided by or at the direction of a doctor;

(B) physical rehabilitation services performed by a licensed occupational therapist provided by or at the direction of a doctor;

(C) psychological services if prescribed by a doctor;

(D) the services of a hospital or other health care facility;

(E) prescription drugs, medicines, and other remedies; and

(F) medical and surgical supplies, appliances, braces, artificial members, and prostheses, including training in the use of those appliances, braces, members, or prostheses.

(21) "Health care facility" means a hospital, emergency clinic, outpatient clinic, or other facility providing health care.

(22) "Health care practitioner" means a licensed individual who provides or renders health care or a nonlicensed individual who provides or renders health care under the direction or supervision of a doctor.

(23) "Health care provider" means a health care facility or health care practitioner.

(24) "Impairment" means any anatomic or functional abnormality or loss existing after maximum medical improvement that results from a compensable injury and is reasonably presumed to be permanent.

(25) "Impairment rating" means the percentage of permanent impairment of the whole body resulting from a compensable injury.

(26) "Income benefit" means a payment made to an employee for a compensable injury. The term does not include medical, death, or burial benefits.

(27) "Injury" means damage or harm to the physical structure of the body and those diseases or infections naturally resulting from the damage or harm. The term also includes occupational diseases.

(28) "Insurance carrier" means:

(A) a person authorized and admitted by the State Board of Insurance to do insurance business in this state under a certificate of authority that includes authorization to write workers' compensation insurance;

(B) a certified self-insurer for workers' compensation insurance as authorized by law; or

(C) a governmental entity that self-insures, either individually or collectively.

(29) "Insurance company" means a person authorized and admitted by the State Board of Insurance to do insurance business in this state under a certificate of authority that includes authorization to write workers' compensation insurance.

(30) "Intoxication" means:

(A) the state of having an alcohol concentration of 0.10 or more, where "alcohol concentration" has the meaning assigned to it in Article 6701l-1, Revised Statutes; or the state of not having the normal use of mental or physical faculties resulting from the voluntary introduction into the body of:

(i) an alcoholic beverage, as that term is defined by Section 1.04, Alcoholic Beverage Code;

(ii) a controlled substance or controlled substance analogue, as those terms are defined by the Texas Controlled Substances Act (Chapter 481, Health and Safety Code);

(iii) a dangerous drug, as defined by Section 483.001, Health and Safety Code;

(iv) an abusable glue or aerosol paint, as defined by Section 485.001, Health and Safety Code; or

(v) any similar substance, the use of which is regulated under state law.

(B) Intoxication does not include the loss of normal use of mental or physical faculties resulting from the introduction into the body of a substance taken under and in accordance with a prescription written for the employee by the employee's doctor.

(C) Intoxication does not include the loss of normal use of mental or physical faculties resulting from the introduction into the body of a substance listed under Paragraph (A) of this subdivision by inhalation or absorption incidental to the employee's work.

(31) "Legal beneficiary" means a person who is entitled to receive death benefits under this Act.

(32) "Maximum medical improvement" means the earlier of:

(A) the point after which further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated, based on reasonable medical probability; or

(B) the expiration of 104 weeks from the date income benefits begin to accrue.

(33) "Medical benefits" means payment for health care reasonably required by the nature of a compensable injury and intended to:

(A) cure or relieve the effects naturally resulting from the compensable injury, including reasonable expenses incurred by the employee for necessary treatment to cure and relieve the employee from the effects of occupational diseases before and after the employee knew or should have known the nature of the disability and its relationship to the employment;

(B) promote recovery; or

(C) enhance the ability of the employee to return to or retain employment.

(34) "Objective" means independently verifiable or confirmable results that are based on recognized laboratory or diagnostic tests or signs confirmable by physical examination.

(35) "Objective clinical or laboratory finding" means a medical finding of impairment resulting from a compensable injury, based on competent objective medical evidence, that is independently confirmable by a doctor, including a designated doctor, without reliance on the employee's subjective symptoms.

(36) "Occupational disease" means a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body. The term includes other diseases or infections that naturally result from the work-related disease. The term does not include an ordinary disease of life to which the general public is exposed outside of employment, unless that disease is an incident to a compensable injury or occupational disease. The term includes repetitive trauma injuries.

(37) "Penalty" means a fine established by this Act.

(38) "Person" means an individual, corporation, organization, business trust, estate, trust, partnership, association, or other legal entity.

(39) "Repetitive trauma injury" means damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment.

(40) "Representative" means a person, including an attorney, authorized by the commission to assist or represent an employee, a person claiming

death benefits, or an insurance carrier in a matter arising under this Act that relates to the payment of compensation.

(41) "Research center" means the Texas Workers' Compensation Research Center established under Article 11 of this Act.

(42) "Sanction" means a penalty or other punitive action or remedy imposed by the commission on an insurance carrier, representative, employee, employer, or health care provider for an act or omission in violation of this Act or a rule or order of the commission.

(43) "Settlement" means a final resolution of all the issues in a workers' compensation claim that are permitted to be resolved under the terms of this Act.

(44) "Subclaimant" means a person who has:

(A) provided compensation payable under this Act, directly or indirectly, to or for an employee or legal beneficiary;

(B) sought and been refused reimbursement from the insurance carrier; and

(C) filed a written subclaim with the commission.

(45) "Subjective" means perceivable only by an employee and not independently verifiable or confirmable by recognized laboratory or diagnostic tests or signs observable by physical examination.

(46) "Treating doctor" means the doctor who is primarily responsible for the employee's health care for an injury.

(47) "Wages" includes every form of remuneration payable for a given period to an employee for personal services. The term includes the market value of board, lodging, laundry, fuel, and other advantage that can be estimated in money which the employee receives from the employer as part of the employee's remuneration.

(48) "Workers' compensation insurance coverage" means an approved insurance policy to secure the payment of compensation, coverage to secure the payment of compensation through self-insurance as provided by this Act, or coverage provided by a governmental entity to secure the payment of compensation.

SECTION 1.04. DISCOUNT RATE; INTEREST RATE. (a) Any interest or discount provided for in this Act shall be at the rate determined in this section.

(b) The commission shall compute and publish the rate quarterly, using the auction rate quoted on a discount basis for the 52-week treasury bills issued by the United States government, as published by the Federal Reserve Board on the date nearest to the 15th day preceding the first day of the calendar quarter for which the rate is to be effective. For this purpose, calendar quarters begin January 1, April 1, July 1, and October 1.

SECTION 1.05. COMPUTATION OF TIME. Computation of any period of time under this Act shall be made in accordance with Section 311.014, Government Code.

ARTICLE 2. TEXAS WORKERS' COMPENSATION COMMISSION; LEGISLATIVE OVERSIGHT COMMITTEE

CHAPTER A. TEXAS WORKERS' COMPENSATION COMMISSION; ORGANIZATION

SECTION 2.01. COMMISSION. (a) The Texas Workers' Compensation Commission is created on the effective date as provided by Section 17.18 of this Act, and the terms of members of the Industrial Accident Board expire on that date.

(b) The Texas Workers' Compensation Commission is composed of six members appointed by the governor with the advice and consent of the senate.

(c) Three members must be employers of labor and three members must be wage earners. In making appointments to the commission, the governor shall attempt to reflect the social, geographic, and economic diversity of the state. To ensure balanced representation, the governor may consider the geographic location of a prospective appointee's domicile, the prospective appointee's experience as an employer or wage earner, the number of employees employed by a prospective member who would represent employers, and the type of work performed by a prospective member who would represent wage earners and shall consider those factors in appointing members to fill vacancies on the commission. In making the appointments, the governor shall consider recommendations made by groups that represent employers or wage earners.

(d) Appointments to the commission shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointee.

(e) A member of the commission is not liable in a civil action for any act performed in good faith in the execution of duties as a commission member.

(f) No member of the commission may be a lobbyist required to be registered with the secretary of state if the primary purpose of the person's employment is to influence the passage of legislation.

(g) A member or employee of the commission may not accept a gift, a gratuity, or entertainment from any person having an interest in any matter or proceeding pending before the commission. A violation of this subsection constitutes a Class A administrative violation and, in the case of members and employees of the commission, constitutes grounds for removal from office or loss of employment.

SECTION 2.02. TERMS; VACANCY. (a) Members of the commission hold office for staggered terms of six years. The terms of one member representing employers and one member representing wage earners expire February 1 of each odd-numbered year.

(b) The governor shall designate one member representing employers and one member representing wage earners for terms expiring February 1, 1991; one member representing employers and one member representing wage earners for terms expiring February 1, 1993; and one member representing employers and one member representing wage earners for terms expiring February 1, 1995.

(c) If a vacancy occurs during a term, the governor shall appoint a replacement to fill the unexpired part of the term. The replacement must be from the group represented by the member being replaced.

SECTION 2.03. CHAIR. (a) The commission shall biennially elect one of its members to serve as chair for a two-year term expiring February 1 of odd-numbered years. The term as chair of the first member elected to that position expires February 1, 1991.

(b) The chair may vote on all matters before the commission.

SECTION 2.04. VOTING REQUIREMENTS. The commission may take action only by majority vote of its membership. Decisions regarding the employment of an executive director require the affirmative votes of at least two commissioners representing employers and at least two commissioners representing wage earners.

SECTION 2.05. REMOVAL OF COMMISSION MEMBERS. (a) It is a ground for removal from the commission if a member:

(1) does not have at the time of appointment the qualifications required for appointment to the commission;

(2) does not maintain during service on the commission the qualifications required for appointment to the commission;

(3) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or incapacity; or

(4) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists.

(c) If the executive director of the commission has knowledge that a potential ground for removal exists, the executive director shall notify the chair of the commission of the ground. The chair shall then notify the governor that a potential ground for removal exists.

SECTION 2.06. REMUNERATION. A member is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the commission, not to exceed any limit established in the General Appropriations Act. A member is entitled to reimbursement for actual lost wages, if any, due to attendance at commission meetings, not to exceed $100 per day and not to exceed $12,000 annually.

SECTION 2.07. MEETINGS. (a) The commission shall meet at least once in each quarter of the calendar year.

(b) The commission may meet at other times at the call of the chair or as provided by the rules of the commission.

SECTION 2.08. LEAVE OF ABSENCE. An employer may not terminate the employment of an employee who is appointed as a member of the commission because of the exercise by the employee of duties required as a commission member. The member is entitled to a leave of absence from employment for the period of time required to perform commission duties. During the leave of absence, the member may not be subjected to loss of time, vacation time, or benefits of employment, excluding salary.

SECTION 2.09. GENERAL POWERS AND DUTIES OF COMMISSION. (a) The commission shall adopt rules as necessary for the implementation and enforcement of this Act.

(b) The commission shall provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this Act and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(c) The commission shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the commission during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.

(d) The commission may accept gifts, grants, or donations as provided by rules adopted by the commission.

(e) The commission shall establish qualifications for representatives as defined in Section 1.03 of this Act and shall adopt rules establishing procedures for authorization of those representatives. If the representative is not an adjuster representing an insurance carrier or is not licensed to practice law, the representative may not receive a fee for providing representation under this Act.

(f) Any sanction that deprives a person of the right to practice before the commission or the right to receive remuneration under this Act for a period exceeding 30 days or any other sanction suspending for a period exceeding 30 days or revoking a license, certification, or permit required for practice in the field of workers' compensation may only be imposed by the commission.

(g) The commission shall appoint the executive director of the commission.

(h) Except for fees established by this Act, the commission shall establish fees for services provided to persons requesting services from the commission.

(i) The commission shall have the authority to employ counsel to represent the commission in any legal action the commission is authorized to initiate.

(j) The commission shall consider and recommend to the legislature changes to this Act. Recommended changes shall be forwarded to the legislature on or before December 1 of each even-numbered year.

(k) The commission may appoint advisory committees as it deems necessary.

(l) Except as provided by Subsection (i) of this section, the rights and duties imposed on the commission by this section may not be delegated.

SECTION 2.091. ADMINISTRATIVE ASSISTANTS. (a) The executive director of the commission shall employ and supervise one person representing wage earners to be employed to act as administrative assistant to the wage earner representatives. The executive director of the commission shall employ and supervise one person representing employers to be employed as administrative assistant to the employer representatives.

(b) The administrative assistants employed under Subsection (a) of this section are permanently assigned for the exclusive use of their respective commission members.

SECTION 2.10. EXECUTIVE DIRECTOR. (a) The executive director is the executive officer and administrative head of the commission. The executive director exercises all rights, powers, and duties imposed or conferred by law on the commission, except for rule making and other rights, powers, and duties specifically reserved by this Act to members of the commission.

(b) The executive director shall hire personnel as necessary to administer this Act.

(c) The executive director serves at the pleasure of the commission.

SECTION 2.11. POWERS AND DUTIES OF THE EXECUTIVE DIRECTOR. (a) The executive director may delegate all powers and duties as necessary.

(b) The executive director shall conduct the day-to-day operations of the commission in accordance with policies established by the commission and otherwise implement commission policy.

(c) The executive director may:

(1) investigate misconduct;

(2) hold hearings;

(3) issue subpoenas to compel the attendance of witnesses and the production of documents;

(4) administer oaths;

(5) take testimony either directly or by deposition or interrogatory;

(6) assess and enforce penalties established by this Act; and

(7) enter appropriate orders as authorized by this Act.

(d) The executive director may correct clerical errors in the entry of orders.

(e) The executive director may institute an action in the commission's name to enjoin the violation of this Act and to intervene in a judicial proceeding as provided in Section 6.61 of this Act.

(f) The executive director may prescribe the form, manner, and procedure for transmission of information to the commission.

(g) The executive director is the custodian of the commission's records and shall perform those duties required by law, including provision of copies and certification of records. The executive director may destroy any records maintained by the commission pertaining to an injury 50 years after the date of injury to which the records refer unless benefits are still being paid on the claim. Records maintained by the commission may be preserved in any format permitted by Chapter 441, Government Code, and rules adopted by the Texas State Library under that chapter.

(h) The executive director is the agent for service of process on out-of-state employers.

(i) The executive director shall develop an intraagency career ladder program. The program shall require intraagency postings of all nonentry level positions concurrently with any public posting.

(j) The executive director shall develop a system of annual performance evaluations. All merit pay for commission employees must be based on the system established under this subsection.

(k) The executive director shall prepare and maintain a written policy statement approved by the commission to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies related to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the commission's work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underutilization in the commission's work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to address those areas of significant underutilization appropriately.

(l) A policy statement prepared under Subsection (k) of this section must cover an annual period, be updated at least annually, and be filed with the governor's office.

(m) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (l) of this section. The report may be made separately or as a part of other biennial reports made to the legislature.

SECTION 2.12. DIVISIONS OF THE COMMISSION. (a) The executive director, with the approval of the commission, may establish divisions within the commission for effective administration and performance of commission functions. The executive director may allocate and reallocate functions among the divisions.

(b) In addition to the divisions authorized under Subsection (a) of this section, the following divisions are established:

(1) division of workers' health and safety;

(2) division of medical review;

(3) division of compliance and practices;

(4) division of hearings; and

(5) division of risk management.

(c) The executive director shall appoint the directors of the divisions of the commission. The directors serve at the pleasure of the executive director.

SECTION 2.13. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a) The executive director shall prepare information of public interest describing the functions of the commission and the procedures by which complaints are filed with and resolved by the commission. The executive director shall make the information available to the public and appropriate state agencies.

(b) The executive director shall keep an information file about each written complaint filed with the commission that is unrelated to a specific workers' compensation claim. If such a complaint is filed with the commission, the commission, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

(c) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on issues under the general jurisdiction of the commission.

(d) The executive director shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental handicap may be provided reasonable access to workers' compensation proceedings.

(e) The commission shall maintain information as to the race, ethnicity, sex, classification of injury, amount of wages earned prior to injury, and amount of compensation received on every compensable injury.

SECTION 2.14. SUBSEQUENT INJURY FUND. (a) The subsequent injury fund is established as a special fund in the state treasury.

(b) The subsequent injury fund is liable for the payment of compensation as provided by Section 4.47 of this Act.

(c) The executive director shall appoint an administrator for the subsequent injury fund.

[Sections 2.15-2.20 reserved for expansion]

CHAPTER B. COMMISSION FINANCING

SECTION 2.21. COMMISSION FUNDING. Unless otherwise provided, all proceeds, including administrative penalties and advance deposits for purchase of services, collected under this Act shall be deposited in the General Revenue Fund of the state treasury to the credit of the commission. The funds may be spent as authorized by legislative appropriation on warrants issued by the comptroller of public accounts under requisitions made by the commission.

SECTION 2.22. MAINTENANCE TAXES AND FEES. (a) To pay the costs of administering this Act, all insurance carriers, except governmental entities, annually shall pay a maintenance tax. No more than two percent of the correctly reported gross workers' compensation insurance premiums may be assessed against insurance companies for this purpose.

(b) Workers' compensation insurance companies shall be taxed at the rate established under Section 2.23 of this Act. Those taxes shall be collected in the manner provided for collection of other taxes on gross premiums from workers' compensation companies as provided in Article 5.68, Insurance Code.

(c) Certified self-insurers shall pay a fee and maintenance taxes as provided by law.

SECTION 2.23. RATE OF ASSESSMENT. (a) The commission shall set and certify to the State Board of Insurance the rate of assessment no later than October 31 of each year, taking into account the following factors:

(1) expenditures projected as necessary for the commission to administer this Act during the fiscal year for which the rate of assessment is set;

(2) projected employee benefits paid from general revenues;

(3) surpluses or deficits produced by this tax in the preceding year; and

(4) revenue recovered from other sources, including reappropriated receipts, grants, payments, fees, gifts, and penalties recovered under this Act.

(b) In setting the rate of assessment, the commission shall not consider revenue or expenditures related to:

(1) the crime victims compensation fund;

(2) the division of risk management;

(3) the research center; or

(4) any other revenue or expenditure excluded from consideration by law.

SECTION 2.24. WITHDRAWAL FROM BUSINESS. If an insurance carrier withdraws from business in this state, the insurance commissioner or the executive director of the commission shall proceed at once to collect taxes due under this Act using legal process as necessary.

SECTION 2.25. TAX RATE SURPLUS OR DEFICIT. (a) If the tax rate assessed by the commission for a given year fails to produce sufficient revenue to

make all expenditures authorized by legislative appropriation, the deficit shall be paid from the General Revenue Fund and reflected in the rate of assessment for the next year.

(b) If the tax rate assessed by the commission for a given year exceeds the revenues required to make all expenditures authorized by the legislature, the excess shall be deposited in the General Revenue Fund to the credit of the commission and reflected in the rate of assessment for the next year.

SECTION 2.26. FUNDING OF SUBSEQUENT INJURY FUND. (a) If a compensable death occurs and there is no legal beneficiary or if a claim for death benefits is not made in a timely manner, the insurance carrier shall pay to the commission for deposit in the subsequent injury fund an amount equal to 364 weeks of the death benefits otherwise payable.

(b) The insurance carrier may elect or the commission may order that death benefits payable to the fund be commuted on written approval of the executive director. The commutation may be discounted for present payment at the rate established in Section 1.04 of this Act, compounded annually.

(c) If a claim for death benefits is not filed with the commission by a beneficiary or beneficiaries on or before the first anniversary of the death of the employee, it shall be presumed, for the purposes of this section only, that no legal beneficiary survived the deceased employee. The presumption does not apply against a minor beneficiary or an incompetent beneficiary for whom no guardian has been appointed.

(d) If the insurance carrier makes payment to the subsequent injury fund and it is later determined by a final award of the commission or the final judgment of a court of competent jurisdiction that a legal beneficiary is entitled to the death benefits, the commission shall order the fund to reimburse the insurance carrier for the amount overpaid to the fund.

SECTION 2.27. AUDITS. The state auditor shall audit the financial transactions of the commission at least once during each biennium.

[Sections 2.28-2.30 reserved for expansion]

CHAPTER C. RECORDS

SECTION 2.31. INJURY INFORMATION CONFIDENTIAL. (a) Information in or derived from a claim file regarding an employee is confidential and may not be disclosed by the commission except as provided by this Act.

(b) Information concerning an employee who has been finally adjudicated of wrongfully obtaining payment under Section 10.04 of this Act or Section 32.51, Penal Code, is not confidential.

(c) The commission shall perform and release a record check on an employee, including current or prior injury information, to the parties listed in Subsection (d) of this section if:

(1) the claim is open or pending before the commission, on appeal to a court of competent jurisdiction, or the subject of a subsequent suit where the insurance carrier or the subsequent injury fund is subrogated to the rights of the named claimant; and

(2) the requesting party requests the release on a form developed by the commission for this purpose and provides all required information.

(d) Information on a claim may be released as provided in Subsection (c) of this section to:

(1) the employee or the employee's legal beneficiary;

(2) the employee's or the legal beneficiary's representative;

(3) the employer at the time of injury;

(4) the insurance carrier;

(5) the Texas Certified Self-Insurer Guaranty Association, if established by law and if that association has assumed the obligations of an impaired employer;

(6) the Texas Property and Casualty Insurance Guaranty Association, if that association has assumed the obligations of an impaired insurance company; or

(7) a third party litigant in a lawsuit in which the cause of action arises from the incident which gave rise to the injury, in which case Subsection (c)(1) of this section does not apply.

SECTION 2.32. EXCEPTIONS. (a) The commission may release information on a claim to a governmental agency, political subdivision, or regulatory body for the following purposes:

(1) investigating an allegation of criminal offense or licensing or regulatory violation;

(2) providing unemployment benefits, crime victims compensation benefits, vocational rehabilitation services, or health care benefits;

(3) investigating occupational safety or health violations; or

(4) verifying income on an application for benefits under an income-based state or federal assistance program.

(b) The commission shall release information on a claim to:

(1) the State Board of Insurance for any statutory or regulatory purpose;

(2) legislative committees for legislative purposes;

(3) a state or federal elected official requested in writing to provide assistance by a constituent who qualifies to obtain injury information under Section 2.31(d) of this Act, if the request for assistance is provided to the commission; and

(4) the research center for research purposes.

SECTION 2.33. INFORMATION AVAILABLE TO PROSPECTIVE EMPLOYERS. (a) When a person applies for employment, the prospective employer who has workers' compensation insurance coverage is entitled, on compliance with this chapter, to obtain information on the applicant's prior injuries.

(b) The employer must make the request by telephone or file the request in writing not more than 14 days after the date on which the application for employment is made.

(c) The request must include the applicant's name, address, and social security number.

(d) The employer must obtain written authorization from the applicant before making the request.

(e) If the request is made in writing, the authorization shall be filed simultaneously. If the request is made over the telephone, the employer shall file the authorization not later than the 10th day after the date on which the request is made.

SECTION 2.34. REPORT OF PRIOR INJURY. (a) The commission shall review its records on receipt of a valid request from a prospective employer under Section 2.33 of this Act.

(b) If the commission finds that the applicant has made two or more general injury claims in the preceding five years, the commission shall release the date and description of each injury to the employer.

(c) The information may be released in writing or by telephone.

(d) The commission may refuse to release information except on receipt of written authorization from each applicant if the employer requests information on three or more applicants at the same time.

(e) For the purposes of this section, "general injury" means an injury other than an injury limited to one or more of the following:

(1) an injury to a digit, limb, or member;

(2) an inguinal hernia; or

(3) vision or hearing loss.

SECTION 2.35. FAILURE TO FILE AUTHORIZATIONS; OFFENSE; ADMINISTRATIVE VIOLATION. An employer who receives information by telephone and fails to file the necessary authorization in a timely manner commits a Class C administrative violation. Each failure to file is a separate violation.

SECTION 2.36. CONFIDENTIALITY TRANSFERS. Any information relating to a claim that is confidential under this Act remains confidential when released to any person, except when used in court for the purposes of an appeal. This subsection does not prohibit an employer from releasing information about a former employee to another employer with whom the employee has made application for employment, if that information was lawfully acquired by the employer releasing the information.

SECTION 2.37. FAILURE TO MAINTAIN CONFIDENTIALITY; OFFENSE. (a) A person who knowingly, intentionally, or recklessly publishes, discloses, or distributes information that is confidential under this chapter to a person not authorized to receive such information directly from the commission commits an offense.

(b) A person who knowingly, intentionally, or recklessly receives information that is confidential under this chapter that the person is not authorized to receive commits an offense.

(c) An offense under this section is a Class A misdemeanor.

(d) An offense under this section may be prosecuted in the courts of Travis County or of the county in which the information was unlawfully received, published, disclosed, or distributed.

(e) The district court of Travis County has jurisdiction to enjoin the use, publication, disclosure, or distribution of confidential information under this section.

SECTION 2.38. STATISTICAL INFORMATION. The commission, research center, or any other governmental agency may prepare and release statistical information if the identity of an employee is not explicitly or implicitly disclosed.

SECTION 2.39. FEES AUTHORIZED. The commission may establish reasonable fees for services provided under this chapter.

[Sections 2.40-2.50 reserved for expansion]

CHAPTER D. LEGISLATIVE OVERSIGHT COMMITTEE

SECTION 2.51. LEGISLATIVE OVERSIGHT COMMITTEE. (a) The Legislative Oversight Committee is created on the effective date of this Act. The committee is composed of six members as follows:

(1) three members must be members of the senate, appointed by the lieutenant governor; and

(2) three members must be members of the house of representatives, appointed by the speaker of the house of representatives.

(b) The committee shall:

(1) meet quarterly with the Texas Workers' Compensation Commission; and

(2) receive information regarding rules adopted by the commission or proposed for adoption by the commission.

(c) The committee may request reports and other information from the commission relating to the operation of the commission.

(d) The committee shall review the specific recommendations for legislation proposed by the commission.

(e) The committee shall monitor the cost of income benefits under this Act, with emphasis on the availability and cost of supplemental income benefits.

(f) The committee shall file a report with the governor, lieutenant governor, and speaker of the house of representatives not later than December 31 of each even-numbered year.

(g) The report shall include:

(1) identification of any problems in the Texas workers' compensation system with recommended solutions for commission and legislative action;

(2) a status report on the effectiveness of the workers' compensation system to provide adequate, equitable, and timely benefits to injured workers, at a reasonable cost to employers, and making recommendations for other research which needs to be conducted;

(3) an evaluation of the research conducted by the research center; and

(4) recommendations for legislative action.

(h) If the study by the Texas Workers' Compensation Research Center finds vocational rehabilitation to be feasible and effective, the committee shall draft legislation creating a vocational rehabilitation pilot program to provide vocational rehabilitation as a benefit under this Act.

(i) The Texas Legislative Council shall assign at least one staff person to assist the committee and shall provide other support as necessary.

ARTICLE 3. COVERAGE

CHAPTER A. COVERAGE REQUIREMENTS

SECTION 3.01. LIABILITY FOR COMPENSATION. (a) An insurance carrier is liable for compensation for an employee's injury without regard to fault or negligence if:

(1) at the time of injury, the employee is subject to this Act; and

(2) the injury arises out of and in the course and scope of employment.

(b) If an injury is an occupational disease, the employer in whose employ the employee was last injuriously exposed to the hazards of the disease is considered to be the employer of the employee under this Act.

SECTION 3.02. EXCEPTIONS. An insurance carrier is not liable for compensation if:

(1) the injury occurred while the employee was in a state of intoxication;

(2) the injury was caused by the employee's wilful intention and attempt to injure himself or to unlawfully injure another person;

(3) the employee's horseplay was a producing cause of the injury;

(4) the injury arose out of an act of a third person intended to injure the employee because of personal reasons and not directed at the employee as an employee or because of the employment;

(5) the injury arose out of voluntary participation in an off-duty recreational, social, or athletic activity not constituting part of the employee's work-related duties, except where these activities are a reasonable expectancy of or are expressly or impliedly required by the employment; or

(6) the injury arose out of an act of God, unless the employment exposes the employee to a greater risk of injury from an act of God than ordinarily applies to the general public.

SECTION 3.03. COMMON-LAW DEFENSES. (a) In an action against an employer who does not have workers' compensation insurance coverage to recover damages for personal injuries or death sustained by an employee in the course and scope of the employment, it is not a defense that:

(1) the employee was guilty of contributory negligence;

(2) the employee assumed the risk of injury or death; or

(3) the injury or death was caused by the negligence of a fellow employee.

(b) This section does not reinstate or otherwise affect the availability of these or other defenses at common law.

(c) The employer may defend the action on the ground that the injury was caused by an intentional act of the employee to bring about the injury or while the employee was in a state of intoxication.

SECTION 3.04. BURDEN OF PROOF. In all such actions against an employer who does not have workers' compensation insurance coverage, it is necessary to a recovery for the plaintiff to prove negligence of the employer or some agent or servant of the employer acting within the general scope of his employment.

SECTION 3.05. APPLICATION TO INDEPENDENT CONTRACTORS. (a) In this section:

(1) "Independent contractor" means a person who contracts to perform work or provide a service for the benefit of another and who ordinarily:

(A) acts as the employer of any employee of the contractor by paying wages, directing activities, and performing other similar functions characteristic of an employer-employee relationship;

(B) is free to determine the manner in which the work or service is performed, including the hours of labor of or method of payment to any employee;

(C) is required to furnish or have his employees, if any, furnish necessary tools, supplies, or materials to perform the work or service; and

(D) possesses the skills required for the specific work or service.

(2) "General contractor" means a person who has undertaken to procure the performance of work or services, either separately or through the use of subcontractors. The term includes a "principal contractor," "original contractor," "prime contractor," or an analogous term. The term does not include motor carriers that make use of owner operators in providing transportation service.

(3) "Motor carrier" means a person operating a motor vehicle over any public highway in this state for the purpose of providing transportation services or contracting to provide those services.

(4) "Owner operator" means a person who provides transportation service for a motor carrier under contract. An owner operator is an independent contractor.

(5) "Subcontractor" means a person who has contracted with a general contractor to perform all or any part of the work or services that a general contractor has undertaken to perform.

(6) "Transportation service" means providing a motor vehicle with a driver under contract used in transporting passengers or property.

(b) For the purposes of workers' compensation insurance coverage, a person who performs work or provides a service for a general contractor or motor carrier who is an employer under this Act is an employee of that general contractor or motor carrier, unless the person is operating as an independent contractor or is hired to perform the work or provide the service as an employee of a person operating as an independent contractor.

(c) A subcontractor and the subcontractor's employees are not employees of the general contractor for purposes of this Act if the subcontractor:

(1) is operating as an independent contractor; and

(2) has entered into a written agreement with the general contractor that evidences a relationship in which the subcontractor assumes the responsibilities of an employer for the performance of work.

(d) An owner operator and the owner operator's employees are not employees of a motor carrier for the purposes of this Act if the owner operator has entered into a written agreement with the motor carrier that evidences a relationship in which

the owner operator assumes the responsibilities of an employer for the performance of work.

(e) A general contractor and a subcontractor may enter into a written agreement under which the general contractor provides workers' compensation insurance coverage to the subcontractor and the employees of the subcontractor. If a general contractor elects to provide that coverage, then, notwithstanding Section 10.02 of this Act, the actual premiums, based on payroll, that are paid or incurred by the general contractor for the coverage may be deducted from the contract price or any other amount owed to the subcontractor by the general contractor. In any agreement under this subsection, the subcontractor and his employees shall be considered employees of the general contractor only for the purposes of workers' compensation laws of this state and for no other purposes.

(f) A copy of any agreement made pursuant to Subsection (e) of this section must be filed with the general contractor's workers' compensation insurance carrier within 10 days of execution. If the general contractor is a certified self-insurer, a copy of the agreement must be filed with the division of self-insurance regulation. Failure to file this agreement constitutes a Class B administrative violation.

(g) A motor carrier and an owner operator may enter into a written agreement under which the motor carrier provides workers' compensation insurance coverage to the owner operator and the employees of the owner operator. If a motor carrier elects to provide that coverage, then, notwithstanding Section 10.02 of this Act, the actual premiums, based on payroll, that are paid or incurred by the motor carrier for the coverage may be deducted from the contract price or any other amount owed to the owner operator by the motor carrier.

(h) If a person who has workers' compensation insurance coverage subcontracts all or part of the work to be performed by the person to a subcontractor with the purpose and intent to avoid liability as an employer under this Act, an employee of the subcontractor who sustains a compensable injury in the course and scope of the employment shall be treated as an employee of the person for purposes of workers' compensation and shall also have a separate right of action against the subcontractor, which right of action does not affect the employee's right to compensation under this Act.

(i) This section does not prevent a general contractor from directing a subcontractor or the employees of a subcontractor to cease or change unsafe work practices.

(j) An insurance company may not demand insurance premiums from an employer for coverage of an independent contractor or employees of an independent contractor if the independent contractor is under a contract of hire with the employer.

(k) This section does not apply to farm or ranch employees.

(l) If a general contractor has workers' compensation insurance to protect the general contractor's employees and if in the course and scope of the general contractor's business the general contractor enters into a contract with a subcontractor who does not have employees, the general contractor shall be treated as the employer of the subcontractor for the purposes of this Act and may enter into an agreement for the deduction of premiums paid in accordance with Subsection (e) of this section.

SECTION 3.06. APPLICATION TO CERTAIN BUILDING AND CONSTRUCTION WORKERS. (a) This section applies only to contractors and workers preparing to construct, constructing, altering, repairing, extending, or demolishing residential structures, or commercial structures not exceeding three stories or 20,000 square feet, or an appurtenance to such a structure.

(b) In this section:

(1) "Hiring contractor" means a general contractor or subcontractor who, in the course of his regular business, subcontracts part or all of the work to others.

(2) "Independent contractor" means a person who contracts to perform work or provide a service for the benefit of another and who:

(A) is paid by the job, not by the hour or some other time-measured basis;

(B) is free to hire as many helpers as he desires and to determine what each helper will be paid; and

(C) is free to work for other contractors, or to send helpers to work for other contractors, while under contract to the hiring employer.

(c) A hiring contractor has no obligation to provide workers' compensation insurance for an independent contractor or to an independent contractor's employee, helper, or subcontractor. Absent an agreement as described in Subsection (d) of this section, an independent contractor shall be responsible for any workers' compensation insurance coverage provided to the employees of that independent contractor.

(d) An independent contractor and the hiring contractor may voluntarily enter into a written agreement whereby the independent contractor agrees that the hiring contractor may withhold the cost of workers' compensation insurance from the contract price and that, for the purpose of providing workers' compensation insurance, the hiring contractor will be the employer of the independent contractor and the independent contractor's employees. The hiring contractor and independent contractor may enter into such an agreement even if the independent contractor has no employees. Absent an agreement as provided for by this subsection, the hiring contractor is not responsible for providing workers' compensation to any independent contractor or to any independent contractor's employee, helper, or subcontractor. The agreement shall be filed with the commission by personal delivery or registered or certified mail. The agreement is deemed filed upon receipt by the commission. The hiring contractor shall send a copy of the joint agreement to the insurer of the hiring contractor when the agreement is filed with the commission. The agreement makes the hiring contractor the employer of the independent contractor and the independent contractor's employees only for the purposes of workers' compensation laws of this state and for no other purposes. The deduction of the cost of the coverage from the independent contractor's contract price is permitted notwithstanding Section 10.02 of this Act.

(e) The commission shall promulgate forms whereby hiring contractors and independent subcontractors may enter into a joint agreement stating that the subcontractor is an independent contractor meeting the qualifications in Subsection (b) of this section and that the subcontractor is not an employee of the hiring contractor. If the statement is signed by both the hiring contractor and the subcontractor and is filed with the commission in the records maintained for that purpose, the subcontractor shall, as a matter of law, be an independent contractor, not an employee of the hiring contractor for purposes of workers' compensation, and shall not, absent a written agreement as described under Subsection (d) of this section, be entitled to workers' compensation coverage from the hiring contractor. The joint statement as provided for in this subsection applies to all hiring agreements between the hiring contractor and independent contractor for one year after the filing date, unless the subsequent hiring agreement expressly states that the joint statement does not apply. If a subsequent hiring agreement is made to which the joint statement does not apply, the hiring contractor and independent contractor shall notify the commission and hiring contractor's insurer in writing. The independent contractor shall be responsible for any workers' compensation provided for the independent contractor's employees, and, absent an agreement as

described under Subsection (d) of this section, the independent contractor's employees shall not be entitled to workers' compensation coverage from the hiring contractor. An independent contractor who has no employees shall be treated like any other independent contractor and is not entitled to coverage under the hiring contractor's workers' compensation insurance policy, except under an agreement made pursuant to Subsection (d) of this section. The joint statement shall be delivered to the commission by personal delivery or registered or certified mail and deemed filed on receipt by the commission. The hiring contractor shall send a copy of the joint agreement to the hiring contractor's insurer when the joint agreement is filed with the commission.

(f) The commission shall set up a system for accepting and maintaining the joint statements of hiring contractors and the independent contractors.

(g) It is a violation of this Act for any hiring contractor to wrongfully induce an employee to enter into a joint statement pursuant to Subsection (e) of this section stating that the employee is an independent contractor and for any hiring contractor to exert controls over an independent contractor or an employee of an independent contractor sufficient to make that person an employee under common-law tests. A hiring contractor shall not be considered to have exerted employer-like controls over an independent contractor or an independent contractor's employee by reason of:

(1) controlling the hours of labor if such control is exercised solely for the purposes of:

(A) establishing the deadline for completion of the work called for by the contract;

(B) scheduling work to occur in a logical sequence and to avoid delays or interference with the work of other contractors; or

(C) scheduling work to avoid disturbing neighbors during night or early morning hours or at other times when the independent contractor's activities would unreasonably disturb activities in the neighborhood; or

(2) stopping or directing work solely for the purpose of:

(A) preventing or correcting an unsafe work practice or condition; or

(B) controlling work solely for the purpose of ensuring that the end product is in conformity with the contracted for result.

(h) Except pursuant to an agreement made in compliance with Subsection (d) of this section, an insurance company may not require insurance premiums from a hiring contractor for coverage for an independent contractor or an independent contractor's employee, helper, or subcontractor if the hiring contractor and independent contractor have filed a joint statement pursuant to Subsection (e) of this section with the commission.

SECTION 3.07. APPLICATION TO FARM OR RANCH EMPLOYEES. (a) This Act applies to actions to recover damages for personal injuries or death sustained by a farm or ranch employee who is:

(1) a migrant worker;

(2) a seasonal worker covered by Subsection (b) of this section; or

(3) employed by a person with a gross annual payroll for the preceding year in the amount provided by Subsection (c) of this section.

(b) To be covered by this Act, a farm or ranch employee who is a seasonal worker must be employed on a truck farm, orchard, or vineyard or employed by a person with a gross annual payroll for the preceding year in an amount provided by this subsection. The preceding year's gross annual payroll must be equal to or exceed the prior year's required payroll adjusted for inflation, but not less than $25,000. To adjust for inflation, the comptroller of public accounts shall develop

a consumer price index for this state. The comptroller shall certify the applicable index factor to the commission before October 1 of each year. The commission shall adjust the gross annual payroll requirement accordingly. A seasonal worker is covered by this law as if the seasonal worker were a migrant worker if:

(1) the seasonal worker is working for a farmer, ranch operator, or labor agent who employs migrant workers; and

(2) the seasonal worker is doing the same work at the same time at the same location as migrant workers.

(c) To be covered by this law, a farm or ranch employee other than a migrant or seasonal worker must:

(1) for the years before 1991, be employed by a person with a gross annual payroll for the preceding year of at least $50,000; and

(2) for 1991 and thereafter, be employed by a person:

(A) with a gross annual payroll in the amount required for coverage of seasonal workers under Subsection (b) of this section; or

(B) who employs three or more farm or ranch employees other than migrant or seasonal workers.

(d) For purposes of Subsections (b) and (c) of this section, the gross annual payroll of a person includes any amount paid by the person to a labor agent for that agent's services and for the services of migrant or seasonal workers, but does not include:

(1) wages paid to the person or a member of the person's family, if the person is a sole proprietor;

(2) wages paid to a partner or a member of a partner's family in a partnership; or

(3) wages paid to a shareholder or a member of a shareholder's family by a corporation in which all shareholders are family members.

(e) If a labor agent furnishes migrant or seasonal workers, the labor agent is liable under this Act as if the labor agent were the person employing the workers, without regard to the right of control or other factors used to determine an employer-employee relationship. However, if the labor agent does not have workers' compensation insurance coverage, the person with whom the labor agent contracts for the services of the migrant or seasonal workers is jointly and severally liable with the labor agent in an action to recover damages for personal injuries or death suffered by any of the migrant or seasonal workers as provided by this Act. For that purpose, the migrant or seasonal workers are considered the employees of the person with whom the labor agent contracts and that person may obtain workers' compensation insurance coverage for those workers as provided by this Act.

(f) A labor agent must notify each person with whom the agent contracts of whether or not the agent has workers' compensation insurance coverage. If the agent does have workers' compensation insurance coverage, the agent must present evidence of the workers' compensation insurance coverage to each person with whom the agent contracts.

(g) If migrant or seasonal workers are covered by workers' compensation insurance, the person with whom the labor agent contracts is not liable in a separate action for injury or death except to the extent provided by this Act.

(h) A person who purchases a workers' compensation insurance policy covering farm or ranch employees may cover himself, a partner, a corporate officer, or a family member in that policy. The insurance policy must specifically name the individual to be covered, and the elected coverage continues while the policy is in effect and the named individual is endorsed on the policy. A member of an employer's family is exempt from coverage under the policy unless covered voluntarily as provided by this section.

(i) In this section:

(1) "Agricultural labor" means the planting, cultivating, or harvesting of an agricultural or horticultural commodity in its unmanufactured state.

(2) "Family" means persons related within the third degree by consanguinity or affinity.

(3) "Labor agent" means a person who:

(A) is a farm labor contractor for purposes of the federal Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C.A. Section 1801 et seq.); or

(B) otherwise recruits, solicits, hires, employs, furnishes, or transports migrant or seasonal agricultural workers who labor for the benefit of a third party.

(4) "Migrant worker" means an individual who is employed in agricultural labor of a seasonal or temporary nature and who is required to be absent overnight from the worker's permanent place of residence.

(5) "Person" means an individual, corporation, or association.

(6) "Seasonal worker" means an individual who is employed in agricultural or ranch labor of a seasonal or temporary nature and is not required to be absent overnight from the worker's permanent place of residence.

(7) "Truck farm" means a farm on which fruits, garden vegetables for human consumption, potatoes, sugar beets, or vegetable seeds are produced for market. The term includes a farm primarily devoted to one of those crops that also has incidental acreage of other crops.

(j) This section does not affect the application or interpretation of this Act as it relates to persons engaged in activities previously determined not to be farm or ranch labor.

(k) A farm or ranch employee who performs work or provides a service for a farm or ranch employer subject to this section is an employee of that employer unless the employee is hired to perform the work or provide the service as an employee of a person acting as an independent contractor. For the purposes of this section, "independent contractor" means a person, other than a labor agent, who contracts with a farm or ranch employer to perform work or provide a service for the benefit of that employer and who ordinarily:

(1) acts as the employer of the employee by paying wages, directing activities, and performing other similar functions characteristic of an employer-employee relationship;

(2) is free to determine the manner in which the work or service is performed, including the hours of labor or the method of payment;

(3) is required to furnish necessary tools, supplies, or materials to perform the work or service; and

(4) possesses skills required for the specific work or service.

SECTION 3.08. EMPLOYEE ELECTION. (a) Except as otherwise provided by law, unless the employee gives notice as provided by Subsection (b) of this section, an employee of an employer waives the employee's right of action at common law or under any statute of this state to recover damages for personal injuries or death sustained in the course and scope of the employment.

(b) An employee who desires to retain the common-law right of action to recover damages for personal injuries or death shall notify the employer in writing that the employee does not want to be covered under this Act and retains all rights of action under common law. The employee shall notify the employer not later than the fifth day after the date the employee begins the employment. If the employer is not a covered employer at the time of the employment but later obtains workers' compensation insurance coverage, to retain the right of action the employee must notify the employer in writing not later than the fifth day after the date on which

the employee receives notice in writing from the employer that the employer has obtained the coverage. An employer may not require an employee to retain common-law rights under this subsection as a condition of employment.

(c) An employee of an employer who elects to retain the right of action and the legal beneficiaries of that employee may bring a cause of action for damages for injuries sustained in the course and scope of the employment under common law or under a statute of this state. Notwithstanding Section 3.03 of this Act, the cause of action is subject to all defenses available under the common law and the statutes of this state.

SECTION 3.09. WAIVER OF COMPENSATION PROHIBITED. Except as otherwise provided for in this Act, an agreement by an employee to waive the employee's right to compensation is void.

SECTION 3.10. EMPLOYEES EXEMPTED FROM THIS ACT. The following employees are not subject to this Act:

(1) a person employed as a domestic worker or a casual worker engaged in employment incidental to a personal residence;

(2) a person covered by a method of compensation established under federal law; or

(3) a farm or ranch employee, except as provided by Section 3.07 of this Act.

SECTION 3.11. VOLUNTARY COVERAGE OF EXEMPT EMPLOYEES. An employer may elect to obtain workers' compensation insurance coverage for an employee or classification of employees otherwise exempted from coverage under Section 3.10(1) or 3.10(3) of this Act. Obtaining workers' compensation insurance coverage applicable to that employee or classification of employees constitutes acceptance by the employer of the rights and responsibilities imposed under this Act as of the effective date of the workers' compensation insurance coverage as long as such coverage remains in effect. An employer who does not obtain coverage for exempt employees is not deprived of the common-law defenses listed under Section 3.03 of this Act, but this section does not reinstate or otherwise affect the availability of those or other defenses at common law.

SECTION 3.12. ALIEN EMPLOYEES; LEGAL BENEFICIARIES. (a) A resident or nonresident alien employee or legal beneficiary is entitled to compensation under this Act.

(b) A nonresident alien claimant, at the election of the claimant, may be officially represented by a consular officer of the country of which the alien is a citizen. That officer may receive benefit payments for distribution to the alien employee. The receipt of such payments constitutes full discharge of the insurance carrier's liability for those payments.

SECTION 3.13. LEGALLY INCOMPETENT EMPLOYEES. If an injured employee is a minor or is otherwise legally incompetent, the employee's guardian may exercise on the employee's behalf the rights and privileges granted to the employee under this Act. The commission by rule shall adopt procedures relating to the method of payment of benefits to legally incompetent employees.

SECTION 3.14. EXTRATERRITORIAL COVERAGE. If an employee, while working in a foreign jurisdiction, suffers an injury that would be compensable had it occurred within this state, the employee or the employee's legal beneficiary is entitled to all rights and remedies under this Act if:

(1) the employee has had significant contacts with this state; or

(2) the employment was principally located in this state.

SECTION 3.15. SIGNIFICANT CONTACTS. An employee has significant contacts with this state if the employee was hired or recruited in this state and the employee:

(1) was injured not later than one year after the date of hire; or

(2) has worked in this state for at least 10 working days during the 12-month period preceding the date of injury.

SECTION 3.16. PRINCIPAL LOCATION. The principal location of a person's employment is where:

(1) the employer has a place of business at or from which the employee regularly works; or

(2) the employee resides and spends a substantial part of the employee's working time.

SECTION 3.17. AGREEMENT ON PRINCIPAL LOCATION; ADMINISTRATIVE VIOLATION. (a) An employee whose work requires regular travel between this and one or more other jurisdictions may agree in writing with the employer on the principal location of the employment.

(b) The employer shall file the agreement with the executive director on request.

(c) A person that violates Subsection (b) of this section commits a Class D administrative violation.

SECTION 3.18. INTERJURISDICTIONAL AGREEMENTS. (a) The executive director may enter into agreements with the appropriate agencies of other jurisdictions which administer the workers' compensation laws of those jurisdictions with respect to:

(1) conflicts of jurisdiction;

(2) the assumption of jurisdiction in cases where the contract of employment arises in one state and the injury is incurred in another;

(3) procedures for proceeding against a foreign employer who fails to comply with this Act; and

(4) procedures for the appropriate agency in a foreign jurisdiction proceeding against a Texas employer that fails to comply with the workers' compensation laws of the foreign jurisdiction.

(b) When the agreement has been executed and adopted by the commission as a rule, it binds all subject employers and employees.

SECTION 3.19. EFFECT OF COMPENSATION PAID IN OTHER JURISDICTIONS. (a) An injured employee who elects to pursue the employee's remedy and recovers compensation under the workers' compensation laws of another jurisdiction is barred from recovering under this Act.

(b) The amount of benefits accepted under the laws of the other jurisdiction without an election under Subsection (a) shall be credited against the compensation that the employee would have received had the claim been made under this Act.

[Section 3.20 reserved for expansion]

CHAPTER B. SECURITY PROCEDURES

SECTION 3.21. DEFINITION. For purposes of this chapter, "employer" means a person that employs one or more employees.

SECTION 3.22. EMPLOYER FILING REQUIRED. (a) An employer who does not obtain coverage must notify the commission in writing, in the time and as prescribed by commission rule, that the employer does not elect to obtain coverage. The commission shall prescribe forms to be used for the employer notification and shall require the employer to provide reasonable information to the commission about the employer's business. The commission may contract with the Texas Employment Commission or the comptroller of public accounts for assistance in collecting the notification required under this section. These agencies shall cooperate with the commission in enforcing this section.

(b) An employer who fails to comply with this section commits a Class D administrative violation, and each day of noncompliance is a separate violation.

(c) The filing required under this section shall be filed with the State Board of Insurance pursuant to Section 3.27 of this Act.

SECTION 3.23. OBTAINING COVERAGE. (a) Except for public employers and as otherwise provided by law, an employer may elect to obtain workers' compensation insurance coverage. An employer may obtain coverage through a licensed insurance company or through self-insurance as provided by this Act. An employer who obtains coverage is subject to the provisions of this Act.

(b) A general contractor or hiring contractor by written contract may assume responsibility for securing workers' compensation insurance coverage for a subcontractor or the employees of a subcontractor pursuant to Section 3.05 or 3.06 of this Act.

(c) In a building or construction contract entered into by this state or a political subdivision of this state, including a municipality, the governmental entity shall require the contractor to certify in writing that the contractor provides workers' compensation insurance coverage for all employees of the contractor employed on the public project. A subcontractor on the project must provide such a certificate to the general contractor relating to the coverage of the employees of the subcontractor. The general contractor shall provide the certificate of a subcontractor to the governmental entity. A contractor who has a contract that requires workers' compensation insurance coverage may provide the coverage through a group plan or other method satisfactory to the governing body of the governmental entity.

(d)(1) In this section "building or construction" includes:

(A) erecting or preparing to erect structures, including buildings, bridges, roadways, public utility facilities, or related appurtenances;

(B) remodeling, extending, repairing, or demolishing a structure; or

(C) otherwise improving real property or appurtenances to real property through similar activities.

(2) The employment of maintenance employees by an employer who is not engaging in building or construction as the employer's primary business purpose does not constitute engaging in building or construction.

SECTION 3.24. NOTICE TO EMPLOYEES. (a) An employer shall notify each employee in the manner provided by this section as to whether or not the employer has workers' compensation insurance coverage.

(b) The employer shall notify a new employee of the existence or absence of coverage at the time the employee is hired.

(c) An employer who obtains coverage or whose coverage is terminated or canceled shall notify each employee that the coverage has been obtained, terminated, or canceled not later than the 15th day after the date on which the coverage or the termination or cancellation of the coverage is effective.

(d) Each employer shall post in the employer's place of business a notice as to whether or not the employer has workers' compensation insurance coverage. The employer shall revise the notice whenever the information it contains is revised.

(e) The notice required by Subsection (d) of this section shall be posted at conspicuous locations at the employer's place of business as necessary to provide reasonable notice to the employees. The commission may adopt rules relating to the form and content of the notice.

(f) A person who fails to comply with this section commits a Class D administrative violation.

SECTION 3.25. COMPANY NOTICE OF COVERAGE; ADMINISTRATIVE VIOLATION. (a) When an employer has secured workers' compensation coverage, the insurance company shall file notice of the coverage with the commission not later than the 10th day after the effective date of the coverage. Coverage is effective on the date a binder is issued or at a later date and time agreed to by the parties.

(b) An insurance company that fails to file notice with the commission in accordance with this section commits a Class C administrative violation and each day of noncompliance is a separate violation.

(c) The notice required under this section shall be filed with the State Board of Insurance pursuant to Section 3.27 of this Act.

SECTION 3.26. EMPLOYER WITHDRAWAL OF COVERAGE; EXTENSION OF COVERAGE. (a) If an employer that has obtained coverage under this Act terminates coverage, the employer shall file written notice by certified mail with the commission not later than the 10th day after notifying the insurance carrier to terminate coverage. The notice must include a statement certifying the date that notice was provided or will be provided to affected employees under Section 3.24 of this Act.

(b) The effective date of withdrawal from coverage shall be the later of:

(1) 30 days after the filing of notice with the commission required in Subsection (a) of this section; or

(2) the cancellation date of the policy.

(c) The insurance coverage shall be extended until the effective date of withdrawal as established in Subsection (b) of this section, and the employer is obligated for premiums due for that period.

(d) The notice required under this section shall be filed with the State Board of Insurance pursuant to Section 3.27 of this Act.

SECTION 3.27. COOPERATION BETWEEN STATE BOARD OF INSURANCE AND TEXAS WORKERS' COMPENSATION COMMISSION. (a) On and after September 1, 1991, the State Board of Insurance shall collect and maintain the information required to be provided under this chapter and shall provide this information in the time and manner prescribed by the commission. The State Board of Insurance shall monitor compliance with the requirements and notify the commission of possible violations in the time and manner prescribed by the commission. The State Board of Insurance is authorized to adopt rules as necessary to enforce this chapter.

(b) The commission shall enforce the administrative penalties established in this chapter according to Article 10 of this Act.

SECTION 3.28. INSURANCE COMPANY CANCELLATION OF COVERAGE; EXTENSION OF COVERAGE. (a) If the insurance company cancels a policy or does not renew it on its anniversary date, the insurance company shall send notice of cancellation or nonrenewal by certified mail or in person to the employer and the commission prior to the effective date of cancellation or nonrenewal.

(b) The insurance company must send notice to the employer and the commission not later than the 30th day before the date on which the cancellation or nonrenewal becomes effective, except as provided by Subsection (c) of this section.

(c) The insurance company may send notice to the employer not later than the 10th day before the date on which the cancellation or nonrenewal becomes effective if the insurance company cancels or does not renew because of:

(1) fraud in obtaining coverage;

(2) misrepresentation of amount of payroll for purposes of premium calculation;

(3) failure to pay a premium when payment is due;

(4) an increase in the hazard for which the insured seeks coverage that results from an action or omission of the employer and that would produce an increase in the rate, including an increase because of a failure to comply with reasonable recommendations for loss control or to comply within a reasonable period with recommendations designed to reduce a hazard that is under the employer's control; or

(5) a determination made by the commissioner of insurance that the continuation of the policy would place the insurer in violation of the law or would be hazardous to the interests of subscribers, creditors, or the general public.

(d) Failure of the insurance company to give the notice as required by this section extends the policy until the required notice is given to the employer and to the commission.

(e) The notice required under this section shall be filed with the State Board of Insurance pursuant to Section 3.27 of this Act.

SECTION 3.29. CLAIMS SERVICES; ADMINISTRATIVE VIOLATION. (a) An insurance carrier shall provide claims services through its own offices located within the state or by other resident representatives with full power to act for the insurance carrier in sufficient numbers and at appropriate locations to reasonably service policies written by the insurance carrier. The commission by rule shall further specify the requirements of this section.

(b) A person who violates rules adopted under this section commits a Class C administrative violation. Each day of noncompliance is a separate violation.

SECTION 3.30. AUSTIN, TRAVIS COUNTY, REPRESENTATIVE REQUIRED; ADMINISTRATIVE VIOLATION. (a) The commission by rule may require an insurance carrier to designate a person in Austin, Travis County, as a representative to act as the insurance carrier's agent before the commission in Austin. After designation, notice to an Austin, Travis County, representative is considered notice to the insurance carrier.

(b) A person who violates rules adopted under this section commits a Class C administrative violation. Each day of noncompliance is a separate violation.

[Sections 3.31-3.40 reserved for expansion]

CHAPTER C. COMMERCIAL INSURANCE

SECTION 3.41. SECURITY BY COMMERCIAL INSURANCE. (a) An insurance company may contract to secure an employer's liability and obligations and to pay compensation by issuing a workers' compensation insurance policy under this chapter.

(b) The following obligations may not be transferred by the employer:

(1) the obligation to accept a report of an injury under Section 5.01 of this Act;

(2) the obligation to maintain records of injuries under Section 5.04 of this Act;

(3) the obligation to report injuries to the commission under Section 5.05 of this Act;

(4) liability for violation of Section 10.01, 10.02, or 10.04 of this Act or of Chapter 115, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8307c, Vernon's Texas Civil Statutes); or

(5) the obligation to comply with a commission order.

(c) The contract for coverage shall be written on a policy and endorsements approved by the State Board of Insurance.

SECTION 3.42. EFFECT OF OTHER INSURANCE COVERAGE. (a) A contract entered to indemnify an employer from loss or damage resulting from an injury sustained by an employee that is compensable under this Act is void unless the contract also covers liability for payment of compensation under this Act.

(b) This section does not prohibit an employer who is not required to have workers' compensation insurance coverage and has elected not to obtain workers' compensation insurance coverage from obtaining any insurance coverage on the employer's employees if the insurance is not represented to any person as providing workers' compensation insurance coverage authorized under this Act.

SECTION 3.43. ALL STATES COVERAGE. The State Board of Insurance shall coordinate with the applicable agencies of other states to:

(1) share information on an employer that obtains all states coverage; and

(2) ensure that the State Board of Insurance has knowledge of an employer that obtains all states coverage in another state but fails to file notice with the State Board of Insurance.

[Sections 3.44-3.50 reserved for expansion]

CHAPTER D. SELF-INSURANCE REGULATION

SECTION 3.51. DEFINITIONS. In this chapter:

(1) "Association" means the Texas Certified Self-Insurer Guaranty Association.

(2) "Director" means the director of the division of self-insurance regulation.

(3) "Impaired employer" means a certified self-insurer:

(A) that has suspended payment of compensation as determined by the commission;

(B) that has filed for relief under bankruptcy laws;

(C) against whom bankruptcy proceedings have been filed; or

(D) for whom a receiver has been appointed by a court of this state.

(4) "Incurred liabilities for compensation" means the sum of the estimate of liabilities for outstanding workers' compensation claims, including claims incurred but not yet reported, plus the estimated amount necessary to provide for the administration of those claims, including legal costs.

(5)(A) "Qualified claims servicing contractor" means:

(i) an insurance company authorized by the State Board of Insurance to write workers' compensation insurance;

(ii) a subsidiary of an insurance company that provides claims service under contract; or

(iii) a third party administrator that has on its staff an individual licensed under Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code).

(B) A qualified claims servicing contractor must be a separate business entity from the certified self-insurer.

SECTION 3.52. GENERAL POWERS AND DUTIES OF COMMISSION. (a) The commission by majority vote shall approve or deny any recommendation of the director of the division of self-insurance regulation concerning the issuance or revocation of a certificate to self-insure.

(b) The commission by majority vote shall certify that a certified self-insurer has suspended payment of compensation or has otherwise become an impaired employer as that term is defined under Section 3.51 of this Act.

(c) The rights and duties imposed on the commission by this section may not be delegated.

SECTION 3.53. DIVISION OF SELF-INSURANCE REGULATION. (a) There is established the division of self-insurance regulation within the Texas Workers' Compensation Commission.

(b) The executive director of the commission shall appoint the director of the division.

(c) In setting the rate of maintenance tax assessment for insurance companies, the commission shall not consider revenue or expenditures related to the division of self-insurance regulation.

SECTION 3.54. DIRECTOR. The director shall exercise all rights, powers, and duties imposed or conferred on the commission by this chapter, except as otherwise provided.

SECTION 3.55. APPLICATION FOR CERTIFICATION. (a) An employer who desires to self-insure under this article must submit an application to the commission for a certificate of authority to self-insure. No certificate of authority may be issued prior to January 1, 1993. The application must be submitted on a form adopted by the commission and be accompanied by a nonrefundable application fee of $1,000. The application fee shall be deposited in the workers' compensation self-insurance fund created under Section 3.62(b) of this Act.

(b) Not later than the 60th day after the day on which the form is received, the director shall recommend approval or denial to the commission. The commission by majority vote shall issue a certificate of authority to self-insure to an applicant who meets the requirements for certification under this article. The certificate of authority is valid for one year after the date of issuance and may be renewed under procedures prescribed by the commission. The director may stagger the renewal dates of certificates of authority to self-insure to facilitate the work load of the division.

SECTION 3.56. REQUIREMENTS FOR CERTIFICATION TO SELF-INSURE; ISSUANCE OF CERTIFICATION. (a) To be eligible for a certificate of authority to self-insure, an applicant for an initial or renewal certificate must present evidence satisfactory to the commission and the guaranty association created under Section 3.70 of this Act of sufficient financial strength and liquidity under standards adopted by the commission to assure that all workers' compensation obligations incurred by the applicant under this article are promptly met. In assessing financial strength and liquidity, the commission shall consider:

(1) the applicant's organizational structure and management background;

(2) the applicant's profit and loss history;

(3) the applicant's compensation loss history;

(4) the source and reliability of the financial information submitted by the applicant;

(5) the number of employees affected by self-insurance;

(6) the applicant's access to excess insurance markets;

(7) financial ratios, indexes, or other financial measures that the commission finds appropriate; and

(8) any other information considered appropriate by the commission.

(b) To be eligible for a certificate of authority to self-insure, an applicant must:

(1) be a business entity, or one of the consolidated subsidiaries of the entity, that is required to register under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.) and furnish financial information prepared in accordance with the requirements for those business entities; or

(2) annually furnish audited financial statements comparable in form and manner of preparation to those filed by a business entity required to register under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.). The commission shall promulgate rules for the requirements for the financial statements required by this subsection.

(c) The applicant must present a plan for claims administration that is acceptable to the commission and designates a qualified claims servicing contractor.

(d) The applicant must demonstrate the existence of an effective safety program for each location in the state at which it conducts business.

(e) If the provider of services is not an employee of the applicant, the applicant must provide to the commission a copy of each contract entered into with a person that provides claims services, underwriting services, or accident prevention services. If the commission has adopted a standard form for such a contract, the contract must be submitted in that form. The contract must be acceptable to the commission.

(f) The applicant must provide security for incurred liabilities for compensation through a deposit with the director, in a combination and from institutions approved by the director, of the following security:

(1) cash or negotiable securities of the United States or of this state;

(2) a surety bond that names the director as payee; or

(3) a letter of credit that:

(A) is irrevocable; and

(B) names the director as payee.

(g) If an applicant who has provided a letter of credit as all or part of the security required under this subsection desires to cancel the existing letter of credit and substitute a different letter of credit or another form of security, the applicant must notify the commission in writing not later than the 60th day before the date on which the original letter of credit is to be canceled.

(h) The estimate of incurred liabilities for compensation must be signed and sworn to by an accredited casualty actuary and submitted with each application.

(i) The sum of the deposited securities must be at least equal to the greater of $300,000 or 125 percent of the applicant's incurred liabilities for compensation.

(j) The applicant shall obtain excess insurance or reinsurance to cover any liability for losses not paid by the self-insurer in an amount not less than the amount required by the director. The director shall require excess insurance or reinsurance in at least the amount of $5 million per occurrence.

(k) If the applicant is a subsidiary, the parent organization must guarantee the obligations imposed by this article.

(l) If an applicant is granted a certificate of authority to self-insure, any interest or other income that accrues from cash or negotiable securities deposited by the applicant as security under Subsection (f) of this section while the cash or securities are on deposit with the director shall be paid to the applicant on a quarterly basis.

(m) The commission, with approval of the guaranty association created under Section 3.70 of this Act, shall issue a certificate of authority to self-insure to an applicant who meets the requirements of this article and pays the required fee.

SECTION 3.57. PREMIUM REQUIREMENTS TO SELF-INSURE. (a) In addition to meeting the other eligibility requirements imposed under this article, an applicant for an initial certificate of authority to self-insure must present evidence satisfactory to the commission of a total unmodified premium in this state for workers' compensation insurance coverage in the current calendar year as follows:

(1) if the application is filed before January 1, 1994, at least $750,000; and

(2) if the application is filed on or after January 1, 1994, at least $500,000.

(b) In lieu of the state premium required under Subsection (a) of this section, the applicant may present evidence of a total unmodified national workers' compensation insurance premium of at least $10 million.

SECTION 3.58. SPECIFIC SECURITY REQUIREMENTS. (a) A security deposit must include within its coverage all amounts covered by terminated surety bonds or terminated excess insurance policies.

(b) A surety bond, irrevocable letter of credit, or a document indicating issuance of an irrevocable letter of credit must be in a form approved by the director and must be issued by an institution acceptable to the director. Such an instrument may be released only according to its terms but may not be released by the depositing of additional security.

(c) The certified self-insurer shall deposit the security with the state treasurer on behalf of the director. The state treasurer may accept securities for deposit or withdrawal only on the written order of the director.

(d) On receipt by the director of a request to renew, submit, or increase or decrease a security deposit, a perfected security interest is created in the certified

self-insurer's assets in favor of the director to the extent of any then unsecured portion of the self-insured's incurred liabilities for compensation. That perfected security interest transfers to any cash or securities deposited by the self-insured with the director after the date of the request and may be released only on:

(1) the acceptance by the director of a surety bond or irrevocable letter of credit for the full amount of the incurred liabilities for compensation; or

(2) the return of cash or securities by the director.

(e) The certified self-insurer loses all right, title, interest in, and control of the assets or obligations submitted or deposited as security. The director may liquidate the deposit and apply it to the certified self-insurer's incurred liabilities for compensation either directly or through the association.

(f) The director, after notice to the concerned parties and an opportunity for a hearing, shall resolve a dispute concerning the deposit, renewal, termination, release, or return of all or part of the security, any liability arising out of the submission or failure to submit security, or the adequacy of the security or reasonableness of the administrative costs, including legal fees, that arises among:

(1) a surety;

(2) the issuer of an agreement of assumption and guarantee of workers' compensation liabilities;

(3) the issuer of a letter of credit;

(4) a custodian of the security deposit;

(5) a certified self-insurer; or

(6) the association.

(g) A party aggrieved by a decision of the director is entitled to judicial review. Venue for an appeal is in Travis County.

(h) Payment of claims from the security deposit or by the association may not be stayed pending the resolution of a dispute under this section unless the court issues a determination staying the payment of claims.

(i) If the director determines that a security deposit has not been made immediately available for the payment of compensation, the director shall determine the appropriate method of payment and claims administration, which may include payment by a surety that issued the bond or by the issuer of an irrevocable letter of credit, and administration by a surety, an adjusting agency, the association, or through any combination of those entities approved by the director.

SECTION 3.59. PROCEDURES ON DENIAL OF APPLICATION. (a) If the commission determines that an applicant for a certificate of authority to self-insure does not meet the requirements for eligibility to self-insure provided by this chapter, the commission shall notify the applicant in writing, stating the specific reasons for the denial and the conditions to be met before approval can be granted.

(b) The applicant is entitled to a reasonable period of time, as determined by the commission, to meet the conditions for approval before the application is considered rejected for purposes of appeal.

(c) During the pendency of approval or denial of the application for certification to self-insure, the applicant may not operate as a self-insurer under this chapter.

SECTION 3.60. ANNUAL REPORT. (a) Each certified self-insurer shall file an annual report with the commission. The commission shall prescribe the form of the report and shall furnish blank forms for preparation of the report to each certified self-insurer. The report must include payroll data in the form prescribed by this article and the commission. The commission may require that the report include other financial and statistical data.

(b) The annual report must present evidence of sufficient financial ability of the certified self-insurer to meet all obligations under this article.

(c) The report must state the number of injuries sustained in the three preceding calendar years and must report separately the amount paid during each year for income benefits, medical benefits, death benefits, burial benefits, and other proper expenses related to worker injuries. The report must include an estimate of future liability for compensation. The estimate must be signed and sworn to by a certified casualty actuary every third year or more frequently if required by the commission.

(d) If the commission considers it necessary, it may order a certified self-insurer whose financial condition or claims record warrants closer supervision to report as provided by this section more often than annually.

(e) Each certified self-insurer shall file with the commission as part of the annual report annual independent financial statements that reflect the financial condition of the self-insurer. The commission shall make a financial statement filed under this subsection available for public review.

SECTION 3.61. EXAMINATION OF RECORDS. (a) The certified self-insurer shall maintain the books, records, and payroll data necessary to compile the annual report and any other information reasonably required by the commission. The material shall be open to inspection and examination by an authorized agent or representative of the commission at reasonable times for the purpose of ascertaining the correctness of the information.

(b) The examination may be made at any location, including the offices of the commission in Austin, or, at the certified self-insurer's option, in offices of the certified self-insurer. The certified self-insurer must pay the reasonable expenses, including travel expenses, of an inspector who makes an inspection at its offices.

(c) The certified self-insurer may maintain the books, records, and payroll data in locations outside this state.

(d) An unreasonable refusal on the part of a certified self-insurer to make available for inspection books, records, payroll data, and other required information is grounds for revocation of the certificate of authority to self-insure and is a Class A administrative violation. Each day of noncompliance constitutes a separate violation.

SECTION 3.62. SELF-INSURANCE REGULATORY FEE. (a) Certified self-insurers shall pay annual fees to cover the administrative costs incurred by the commission in implementing this chapter. The fees shall be based on the total amount of income benefit payments made in the preceding calendar year. The commission shall assess each certified self-insurer a pro rata share based on the ratio the total amount of income benefit payments made by that self-insurer bears to the total amount of income benefit payments made by all certified self-insurers.

(b) The fees shall be deposited in the state treasury to the credit of a fund to be known as the workers' compensation self-insurance fund and to be used only for the regulation of certified self-insurers. Any amount not used in a budget year shall be used to reduce the regulatory fees assessed in the succeeding budget year.

SECTION 3.63. SELF-INSURER MAINTENANCE TAX. (a) Each certified self-insurer shall pay a self-insurer maintenance tax for the administration of the commission. No more than two percent of the total tax base of all certified self-insurers, as computed under Subsection (c) of this section, may be assessed for this purpose.

(b) The tax liability of a certified self-insurer under this section shall be the tax base computed under Subsection (c) of this section multiplied by the rate assessed workers' compensation insurance companies under Sections 2.22 and 2.23 of this Act.

(c) To determine the tax base of a certified self-insurer for purposes of this chapter, each certified self-insurer shall report its payroll by individual workers' compensation risk code classifications in its application for certification and in its annual reports to the commission. The commission shall compute the estimated

manual premium for the certified self-insurer using the workers' compensation insurance rates established by the State Board of Insurance. The estimated manual premium shall be multiplied by 0.75, and the product is the certified self-insurer's tax base.

SECTION 3.64. COLLECTION OF SELF-INSURER TAXES AND FEES; PENALTIES. (a) The taxes imposed by Section 3.63 of this Act and the fee imposed by Section 3.62 of this Act are due and payable on the 60th day after the issuance of a certificate to self-insure and on the 60th day after each annual renewal date. The commission shall compute the taxes and fee of the certified self-insurer and notify the certified self-insurer of the amounts due. The taxes and fee shall be remitted to the commission.

(b) The self-insurer maintenance tax shall be deposited in the state treasury to the credit of the commission.

(c) Failure to timely pay the taxes and fee imposed by Sections 3.62 and 3.63 of this Act constitutes a Class B administrative violation. Each day of noncompliance constitutes a separate violation.

SECTION 3.65. WITHDRAWAL FROM SELF-INSURANCE. (a) A certified self-insurer may withdraw from self-insurance at any time with the approval of the commission. The commission shall approve the withdrawal if the certified self-insurer shows to the satisfaction of the commission that the certified self-insurer has established an adequate program to pay all incurred losses, including unreported losses, that arise out of accidents or occupational diseases first distinctly manifested during the period of operation as a certified self-insurer. A certified self-insurer who withdraws from self-insurance shall surrender its certificate of authority to self-insure to the commission.

(b) If the certificate of a certified self-insurer is terminated, the insurance commissioner or the executive director of the commission shall proceed at once to collect taxes due under this Act using legal process as necessary.

SECTION 3.66. CLAIMS. A claim or suit brought by a claimant or a certified self-insurer shall be styled "in re: [name of employee] and [name of certified self-insurer]." The director shall be the agent for service of process for a claim or suit brought by a workers' compensation claimant against the certified self-insurer's qualified claims servicing contractor.

SECTION 3.67. AGENT'S COMMISSION. This chapter does not prohibit a certified self-insurer from paying a commission to an insurance agent licensed in this state.

SECTION 3.68. REVOCATION OF CERTIFICATE OF AUTHORITY. (a) The commission by majority vote may revoke the certificate of authority to self-insure of a certified self-insurer who fails to comply with any of the requirements or conditions provided by this article or the rules adopted by the commission under this article.

(b) If the commission believes that grounds exist to revoke a certificate of authority to self-insure, the commission shall hold a hearing to determine if the certificate should be revoked. The hearing shall be conducted in the manner provided for a contested case under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The commission shall notify the certified self-insurer of the hearing and the grounds not later than the 30th day before the scheduled hearing date. If the certified self-insurer fails to show cause, the commission shall immediately revoke the certificate.

(c) A certified self-insurer whose certificate to self-insure has been revoked is not relieved of its obligations for compensation to its employees for accidental injuries or occupational diseases that occur during the period of self-insurance. The required security shall be maintained with the commission or under the

commission's control until each claim for workers' compensation benefits has been paid, been settled, or lapsed under this Act.

SECTION 3.69. TERMINATION OF EXCESS INSURANCE OR REINSURANCE COVERAGE; ADMINISTRATIVE VIOLATION. (a) A certified self-insurer shall notify the director not later than 10 days after the certified self-insurer has notice of the cancellation or termination of any excess insurance or reinsurance coverage required under Section 3.56(j) of this Act.

(b) A violation of this section is a Class B administrative violation. Each day of noncompliance constitutes a separate violation.

SECTION 3.70. TEXAS CERTIFIED SELF-INSURER GUARANTY ASSOCIATION. (a) The Texas Certified Self-Insurer Guaranty Association is established to provide for payment of workers' compensation benefits for the injured employees of an impaired employer. To be entitled to self-insure, each employer who desires to become a certified self-insurer must be a member of the association. The members shall provide for the election of a board of directors including two certified self-insurer members. The board of directors shall also include, as voting members, one commission member representing wage earners, one commission member representing employers, the executive director of the Texas Workers' Compensation Commission, and the public counsel of the division of consumer protection of the State Board of Insurance. The director of the division of self-insurance regulation shall serve as a nonvoting member. The board of directors may adopt rules for the operation of the association. Rules adopted by the board of directors are subject to the approval of the Texas Workers' Compensation Commission.

(b) Members of the association shall be assessed a fee, based on total amount of income benefits payments made in this state for the preceding reported calendar year, to create, over a period of five years, a Texas certified self-insurer guaranty trust fund of at least $1 million for the emergency payment of the compensation liabilities of an impaired employer. The fund may not exceed $2 million. The board of directors of the association shall administer the trust fund in accordance with rules adopted by the commission. The assessment for the first year after an employer is issued a certificate to self-insure shall be based on the income benefit payments paid by the employer's carrier in the year before the certificate was issued.

(c) If the commission determines that the payment of benefits and claims administration shall be made through the association, the association shall assume the workers' compensation obligations of the impaired employer and shall begin the payment of the obligations for which it is liable not later than the 30th day after the date of notification by the director. The association shall make payments to claimants whose entitlement to benefits can be ascertained by the association. On the assumption of obligations by the association under the director's determination, the association is entitled to immediate possession of any deposited security, and the custodian, surety, or issuer of any irrevocable letter of credit shall deliver the security to the association together with any interest that has accrued.

(d) On determination by the commission that a certified self-insurer has become an impaired employer, the director shall secure release of the security deposit required by this article and shall promptly estimate the amount of any additional funds needed to supplement the security deposit, the available assets of the impaired employer for the purpose of making payment of all incurred liabilities for compensation, and the funds maintained by the association for the emergency payment of compensation liabilities. The director shall advise the board of directors of the association of the estimate of any necessary additional funds, and the board of directors shall promptly assess each certified self-insurer, except impaired employers, to collect the required funds. The assessments shall be made against all certified self-insurers in proportion to the ratio that the total paid income benefit

payment for the preceding reported calendar year bears to the total paid income benefit payment by all certified self-insurers, except impaired employers, in this state in that calendar year.

(e) A certified self-insurer designated as an impaired employer is exempt from assessment beginning on the date of that designation until the commission determines that the employer is no longer impaired.

(f) Each certified self-insurer shall pay the amount of its assessment to the association not later than the 30th day after the date on which the division notifies the self-insurer of the assessment. A delinquent assessment may be collected on behalf of the association through a suit brought for that purpose. Venue for the suit is in Travis County.

(g) Funds advanced by the association under this article do not become assets of the impaired employer but are considered a special fund advanced to the director, trustee in bankruptcy, receiver, or other lawful conservator only for the payment of compensation liabilities, including the cost of claims administration and legal costs.

(h) The association or the surety making compensation payments under this chapter is entitled to the same preference over the other debts of the impaired employer or the impaired employer's estate as provided by law to the person directly entitled to the compensation.

(i) The commission, after notice and hearing and by majority vote, may suspend or revoke the certificate of authority to self-insure of any certified self-insurer that fails to pay an assessment. The association promptly shall report such a failure to the director. A certified self-insurer whose certificate of authority to self-insure is revoked or surrendered remains liable for any unpaid assessments made against an impaired employer who becomes an impaired employer before the date of the revocation or surrender.

(j) Notwithstanding Subsection (c) of this section, the association is not liable for the payment of any penalties assessed for any act or omission on the part of any person other than the association.

(k) The association is a party in interest in any proceeding involving a workers' compensation claim against an impaired employer whose compensation obligations have been paid or assumed by the association. The association has the same rights and defenses as the impaired employer, including the right to:

(1) appear, defend, and appeal a claim;

(2) receive notice of, investigate, adjust, compromise, settle, and pay a claim; and

(3) investigate, handle, and deny a claim.

(l) Information on a workers' compensation claim may be released as provided in Section 2.31(c) of this Act to the association, if the association has assumed the obligations of an impaired employer.

ARTICLE 4. BENEFITS

CHAPTER A. GENERAL PROVISIONS

SECTION 4.01. EXCLUSIVE REMEDY; EXEMPLARY DAMAGES. (a) Except as provided by Subsection (b) of this section, a recovery of workers' compensation benefits under this Act is the exclusive remedy of an employee or legal beneficiary against the employer or an agent, servant, or employee of the employer for the death of or a work-related injury sustained by a covered employee.

(b) This section does not prohibit the recovery of exemplary damages by the surviving spouse or heirs of the body of a deceased employee whose death was caused by an intentional act or omission of the employer or by the employer's gross negligence. For the purposes of this section, "gross negligence" has the meaning assigned to it by Section 41.001, Civil Practice and Remedies Code.

SECTION 4.02. POLICY STATEMENT ON MENTAL TRAUMA INJURIES. (a) It is the express intent of the legislature that nothing in this Act shall be construed to limit or expand recovery in cases of mental trauma injuries.

(b) A mental or emotional injury that arises principally from a legitimate personnel action, including a transfer, promotion, demotion, or termination is not a compensable injury for the purposes of this Act.

SECTION 4.03. SURVIVAL OF CAUSE OF ACTION. A right of action survives in a case based on a compensable injury that results in the employee's death.

SECTION 4.04. EMPLOYER LIABILITY TO THIRD PARTY. If an action for damages is brought by an injured employee, the legal beneficiary of a deceased employee, or an insurance carrier against a third party liable to pay damages for the injury or death as provided by Section 4.05 of this Act and the action results in a judgment against the third party or a settlement by the third party, the employer is not liable to the third party for any reimbursement or damages based on the judgment or settlement unless the employer executed, before the injury or death occurred, a written agreement with the third party to assume the liability.

SECTION 4.05. THIRD PARTY LIABILITY. (a) If a third party is or becomes liable to pay damages for an injury or death which is compensable under this Act, the employee or legal beneficiary may seek damages from the third party. An employee or legal beneficiary who seeks damages from a third party remains entitled to pursue a claim for workers' compensation benefits under this Act.

(b) If compensation is claimed under this Act by the injured employee or the employee's legal beneficiaries, the insurance carrier is subrogated to the rights of the injured employee and may enforce in the name of the injured employee or the legal beneficiaries the liability of that other person. If the recovery is for a sum greater than that paid or assumed by the insurance carrier to the employee or the legal beneficiaries, then, out of the amount recovered, the insurance carrier shall reimburse itself and pay the costs, and the excess recovered shall be paid to the injured employee or the beneficiaries.

(c) If a claimant receives compensation from the subsequent injury fund, the commission is considered to be the insurance carrier under this section for purposes of those benefits, is subrogated to the rights of the injured employee, and is entitled to reimbursement in the same manner as the insurance carrier. The commission shall remit money recovered under this subsection to the state treasurer for deposit to the credit of the subsequent injury fund.

(d) If the claimant is represented by an attorney and the insurance carrier's interest is not actively represented by an attorney, the insurance carrier shall pay a fee to the claimant's attorney not to exceed one-third of the subrogation recovery or as may have been agreed on between the claimant's attorney and the insurance carrier, or, in the absence of an agreement, the court shall allow a reasonable attorney's fee to the claimant's attorney for recovery of the insurance carrier's interest which in no case shall exceed 33-1/3 percent payable out of the insurance carrier's recovery, and a proportionate share of expenses, payable out of the insurance carrier's part of the recovery. If the claimant's attorney is also representing the subrogated insurance carrier, a full written disclosure must be made by the attorney to the claimant before actual employment by the insurance carrier as an attorney. The disclosure must be acknowledged by the claimant, and a signed copy of the disclosure shall be furnished to all concerned parties and made a part of the commission file. A copy of the disclosure with the authorization and consent shall also be filed with the claimant's pleadings before any judgment entered and approved by the court. Unless the claimant's attorney complies with all of the requirements as prescribed in this section, the attorney shall not be entitled to receive any of the fees prescribed in this section to which he would be entitled pursuant to an agreement with the insurance carrier.

(e) If the insurance carrier obtains an attorney to actively represent its interest and if the attorney actively participates in obtaining a recovery, the court shall award and apportion an attorney's fee allowable out of the insurance carrier's subrogation recovery between those attorneys, considering the benefit accruing to the insurance carrier as a result of each attorney's service. The aggregate of those fees may not exceed 33-1/3 percent of the subrogated interest.

(f) If at the conclusion of a third party action, a workers' compensation claimant is entitled to compensation, the net amount recovered by the claimant from the third party action shall be applied to reimburse the insurance carrier for past benefits and medical expenses paid. Any amount in excess of past benefits and medical expenses shall be treated as an advance against future benefit payments of compensation that the claimant is entitled to receive under this Act. If the advance is adequate to cover all future compensation and medical benefit payments as provided by this Act, the insurance carrier is not required to make further payments. If the advance is insufficient, the insurance carrier shall resume the payments when the advance is exhausted. The reasonable and necessary medical expenses incurred by the claimant because of the injury shall be deducted from the advance in the same manner as benefit payments.

(g) For purposes of determining attorneys' fees under this section, only the amount recovered for past benefits and medical expenses paid by the insurance carrier may be considered.

SECTION 4.06. CERTAIN EMPLOYER PAYMENTS REIMBURSABLE. (a) After an injury, an employer may initiate compensation payments, including medical benefits, or, on the written request or agreement of the employee, supplement income benefits paid by the insurance carrier by any amount that does not exceed the difference between the level of income benefit payments and the employee's net preinjury wages.

(b) If the injury is found compensable and the insurance carrier initiates compensation, the insurance carrier shall reimburse the employer for the amount of compensation paid by the employer and to which the employee was entitled under this Act.

(c) The employer shall notify the commission and the insurance carrier on forms prescribed by the commission of the initiation of and the amount of payments made under this section.

(d) Employer payments made under this section may not be construed as an admission of compensability and do not affect the payment of benefits from any other source.

(e) The insurance carrier shall reduce impairment income benefit payments to an employee by an amount equal to any employer payments made under this section that are not reimbursed or reimbursable under Subsection (b) of this section. The insurance carrier shall remit the amount of a reduction under this subsection to the employer who made the payments. The commission shall adopt rules and forms to ensure the full reporting and the accuracy of reductions and reimbursements made under this subsection.

(f) If the employer does not notify the commission of the injury in compliance with Section 5.05 of this Act, the employer waives the right to reimbursement under this section.

SECTION 4.07. EXEMPT FROM LEGAL PROCESS; ASSIGNABILITY. (a) Benefits received under this Act are exempt from garnishment, attachment, judgment, and other actions or claims.

(b) Except as provided by Subsection (c) of this section, benefits are not assignable.

(c) A legal beneficiary may, with commission approval, assign the right to death benefits.

SECTION 4.08. ALLOWABLE LIENS. (a) Income or death benefits are subject only to the following liens or claims, to the extent of any income or death benefits that are unpaid on the date the insurance carrier receives written notice of the lien, in the following order of priority:

(1) an attorney's fee for representing an employee or legal beneficiary in any matter arising under this Act;

(2) court-ordered child support; or

(3) a subrogation interest established under this Act.

(b) Benefits under this Act that are subject to a lien for court-ordered child support shall be paid as required by an order withholding income under Section 14.43, Family Code, or by a writ of withholding under Section 14.45, Family Code.

SECTION 4.09. ATTORNEY'S FEES BEFORE THE COMMISSION OR COURT. (a) An attorney's fee, including a contingency fee, for representing a claimant before the commission or court under the provisions of this Act must be approved by the commission or court.

(b) Except as otherwise provided, the attorney's fee under this section shall be based on the attorney's time and expenses as presented by written evidence to the commission or court, and such fee is subject to a maximum of 25 percent of the claimant's recovery. Except as provided in Section 4.28 of this Act, the attorney's fee shall be paid from the claimant's recovery.

(c) In approving an attorney's fee under this section, the commission or court shall consider:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly;

(2) the fee customarily charged in the locality for similar legal services;

(3) the amount involved in the controversy;

(4) the benefits to the claimant that the attorney is responsible for securing; and

(5) the experience and ability of the attorney performing the services.

(d) The commission by rule or the court may provide for the commutation of attorney's fees, except that the attorney's fee shall be in periodic payments in a claim involving death benefits when the only dispute is as to the proper beneficiary or beneficiaries.

(e) The commission by rule shall provide for guidelines for maximum attorney's fees for specific services, based on the criteria in this section, and in no event may an attorney's fee exceed 25 percent of the claimant's recovery.

(f) In all cases involving fatal injuries or lifetime disability income benefits where the insurance carrier admits liability on all issues involved and tenders payment of maximum benefits in writing under this Act while the claim is pending before the commission, no attorney's fee shall be allowed.

(g) The attorney's fee shall be paid to the attorney by separate draft.

SECTION 4.091. ATTORNEY'S FEES PAID TO DEFENSE COUNSEL. (a) The amount of an attorney's fee paid for defending an insurance carrier in a workers' compensation action brought under this Act must be approved by the commission or court.

(b) Attorney's fees paid for defending a workers' compensation claim must be approved by the commission or court as being reasonable and necessary.

(c) In determining whether a fee is reasonable under this section, the commission or court shall consider issues analogous to those listed under Section 4.09(c) of this Act. The defense counsel shall present written evidence to the commission or court relating to the time spent and expenses incurred in defending the case and shall present other evidence as considered necessary by the commission or court in making a determination under this section.

SECTION 4.10. AVERAGE WEEKLY WAGE. (a) Except as otherwise provided by this section, if the employee has worked for the employer for at least

13 consecutive weeks immediately preceding the injury, the average weekly wage of an employee shall be computed as of the date of the injury and equals the sum of the wages paid in the 13 consecutive weeks immediately preceding the injury divided by 13.

(b) If the employee has worked for the employer for fewer than 13 weeks immediately preceding the injury or if the wage at the time of injury has not been fixed or cannot be determined, the average weekly wage equals the usual wage that the employer pays a similar employee for similar services. If no such employee exists, then the average weekly wage equals the usual wage paid in that vicinity for the same or similar services provided for remuneration.

(c) In this subsection, "part-time employee" means an employee who, at the time of the injury, was working less than the full-time hours or full-time workweek of similar employees in the same employment, whether for the same or a different employer. The average weekly wage of a part-time employee who limits the employee's work to less than full-time hours or full-time workweek as a regular course of that employee's conduct shall be computed as provided by Subsections (a) and (b) of this section. For all other part-time employees, the average weekly wage shall be computed for the purpose of determining temporary income benefits as provided by Subsections (a) and (b) of this section, and the average weekly wage for the purpose of determining impairment income benefits, supplemental income benefits, lifetime income benefits, and death benefits shall be computed as follows:

(1) if the employee has worked for the employer for at least 13 weeks immediately preceding the injury, the average weekly wage equals the sum of the wages paid in the 13 consecutive weeks immediately preceding the injury divided by 13 and adjusted to the weekly wage level the employee would have attained by working a full-time workweek at the same rate of pay; and

(2) if the employee has worked for the employer for fewer than 13 weeks immediately preceding the injury, the average weekly wage equals the weekly wage that the employer pays a similar employee for similar services in full-time employment. If no such employee exists, then the average weekly wage equals the usual wage paid in that vicinity for the same or similar services provided for compensation in full-time employment.

(d) In this subsection, "seasonal employee" means an employee who, as a regular course of that employee's conduct, engages in seasonal or cyclical employment that does not continue throughout the entire year. The average weekly wage of a seasonal employee shall be computed for the purpose of determining temporary income benefits as provided by Subsections (a) and (b) of this section, adjusted as often as necessary to reflect the wages the employee could reasonably have expected to earn during the period that temporary income benefits are paid. The average weekly wage of a seasonal employee shall be computed for the purpose of determining impairment income benefits, supplemental income benefits, lifetime income benefits, or death benefits by dividing the amount of total wages earned by the employee during the 12 months immediately preceding the injury by 50. If, for good and sufficient reason as determined by the commission, it is impractical to compute the average weekly wage for a seasonal employee as provided by this subsection, the commission shall compute the average weekly wage as of the time of the injury in a manner that is fair and just to both parties.

(e) The average weekly wage for an employee who is a minor, apprentice, trainee, or student at the time of the injury, whose employment or earnings at the time of the injury are limited primarily because of apprenticeship, continuing formal training, or education intended to enhance the employee's future wages, and whose wages would reasonably be expected to change, based on a change of employment during the period in which impairment income benefits, supplemental income benefits, lifetime income benefits, or death benefits are payable, shall be

adjusted to reflect the level of expected wages during that period for the purpose of computing those benefits. The adjustment shall not consider expected wage levels for a period occurring more than three years after the date of the injury.

(f) To expedite the payment of income benefits, the commission may adopt rules establishing a presumption that the employee's last paycheck accurately reflects the employee's usual wage or establishing other reasonable presumptions relating to the wages earned by an employee. The employer shall file a wage statement showing the amounts of all wages, as that term is defined under Section 1.03 of this Act, paid to the employee within 30 days of the employer's receipt of notice of injury to the employee. Failure to file a complete report of such information shall be a Class D administrative violation.

(g) If the methods adopted under Subsections (a) and (b) of this section cannot be applied reasonably due to the irregularity of the employment or if the employee has lost time from work during said 13-week period due to illness, weather, or other cause beyond the control of the employee, the commission may determine the employee's average weekly wage by any method that it considers fair, just, and reasonable to all parties and consistent with the methods established under this section.

(h) For the purposes of this section, the determination as to whether employees, services, or employment are the same or similar shall consider the training and experience of the employees, the nature of the work, and the number of hours normally worked.

(i) The commission shall not include nonpecuniary wages in the computation of an employee's average weekly wage during any period in which the employer continues to provide the nonpecuniary wages.

SECTION 4.11. MAXIMUM WEEKLY BENEFITS. (a) On and after the effective date of this Act, the maximum weekly income benefit is:

(1) for temporary income benefits, 100 percent of the state average weekly wage;

(2) for impairment income benefits, 70 percent of the state average weekly wage;

(3) for supplemental income benefits, 70 percent of the state average weekly wage;

(4) for death benefits, 100 percent of the state average weekly wage; and

(5) for lifetime income benefits, 100 percent of the state average weekly wage.

(b) The state average weekly wage equals the annual average of the average weekly wage of manufacturing production workers in this state, as determined by the Texas Employment Commission.

(c) Using the averages determined by the Texas Employment Commission, the commission shall establish the maximum weekly income benefit for each state fiscal year not later than September 1 of each year. The commission shall round the maximum to the nearest whole dollar amount.

(d) The maximum weekly income benefit in effect on the date of injury is applicable for the entire period during which the income benefits are payable.

SECTION 4.12. MINIMUM WEEKLY BENEFITS. (a) On and after the effective date of this Act, the minimum weekly benefit is 15 percent of the state average weekly wage as determined under Section 4.11 of this Act, rounded to the nearest whole dollar amount.

(b) The commission shall establish the minimum weekly income benefit for each state fiscal year not later than September 1 of each year.

(c) The minimum weekly income benefit in effect on the date of injury is applicable for the entire period during which the income benefits are payable.

SECTION 4.13. INTEREST ON ACCRUED INCOME BENEFITS. (a) In any order to pay income or death benefits accrued but not paid, the order shall include interest on the amount of compensation due at the rate provided in Section 1.04 of this Act.

(b) Accrued but not paid compensation and interest shall be paid in a lump sum.

SECTION 4.14. DATE OF INJURY FOR OCCUPATIONAL DISEASE. For purposes of this Act, the date of injury in the case of an occupational disease is the date on which the employee knew or should have known that the disease may be related to the employment.

SECTION 4.15. COMPENSABILITY OF HEART ATTACKS. A heart attack is a compensable injury under this Act only if:

(1) the attack can be identified as:

(A) occurring at a definite time and place; and

(B) caused by a specific event occurring in the course and scope of employment;

(2) the preponderance of the medical evidence regarding the attack indicates that the employee's work rather than the natural progression of a preexisting heart condition or disease was a substantial contributing factor of the attack; and

(3) the attack was not triggered solely by emotional or mental stress factors, unless it was precipitated by a sudden stimulus.

SECTION 4.16. REQUIRED MEDICAL EXAMINATIONS. (a) The commission may require the employee to submit to medical examinations to resolve any question about the appropriateness of the health care received by the employee, the impairment caused by the compensable injury, the attainment of maximum medical improvement, or analogous issues.

(b) The commission may require the employee to submit to a medical examination at the request of the insurance carrier. The commission shall require the examination only after the insurance carrier has attempted and failed to receive the permission and concurrence of the employee. The insurance carrier is entitled to the examination only once in a 180-day period. Subsequent examinations shall be by the same doctor unless otherwise approved by the commission.

(c) The insurance carrier shall pay for an examination required under Subsection (a) or (b) of this section and the reasonable expense incident to the employee in submitting to such an examination.

(d) The injured employee is entitled to have a doctor of his choice present at an examination that is required by the commission at the request of the insurance carrier. The insurance carrier shall pay the fee of the doctor selected by the employee, the fee to be fixed by the commission.

(e) If the report of a doctor selected by the insurance carrier indicates the employee can return to work immediately, the commission shall schedule a benefit review conference on the next available docket. The insurance carrier may not suspend medical or income benefit payments pending the benefit review conference.

(f) An employee who, without good cause, fails or refuses to appear at the time scheduled for an examination authorized by Subsection (a) or (b) of this section commits a Class D administrative violation.

[Sections 4.17-4.20 reserved for expansion]

CHAPTER B. INCOME BENEFITS

SECTION 4.21. INCOME BENEFITS; DETERMINATION BY COMMISSION. (a) An employee is entitled to income benefits to compensate the employee for a compensable injury as provided in this chapter.

(b) Except as otherwise provided by this Act, income benefits shall be paid without order from the commission on a weekly basis as and when they accrue.

Entitlement to income benefits under this chapter terminates on the death of the employee, and no interest in future income benefits survives after the employee's death.

SECTION 4.22. ACCRUAL OF RIGHT TO INCOME BENEFITS. (a) Weekly income benefits may not be paid under this Act for an injury that does not result in disability for a period of at least one week. If disability extends beyond one week, weekly income benefits begin to accrue on the eighth day after injury. This section does not preclude recovery of medical benefits as provided by Chapter D of this article.

(b) If disability does not follow at once after the injury occurs or within eight days of the occurrence but does result subsequently, weekly income benefits begin to accrue on the eighth day after the date the disability began.

(c) If the disability continues for four weeks or longer after the beginning date of the disability, the compensation shall be computed from the beginning date of the disability.

SECTION 4.23. TEMPORARY INCOME BENEFITS. (a) An employee who has disability and who has not attained maximum medical improvement is entitled to temporary income benefits. These benefits accrue beginning on the eighth day of disability and shall be paid weekly. On the initiation of compensation as provided under Section 5.21 of this Act, the insurance carrier shall pay temporary income benefits as provided by this section.

(b) Temporary income benefits continue until the employee has reached maximum medical improvement.

(c) Except as provided in Subsection (d) of this section, temporary income benefits are payable at the rate of 70 percent of the difference between the employee's average weekly wage and the employee's weekly earnings after the injury, not to exceed the maximum weekly benefit under Section 4.11 of this Act or to be less than the minimum weekly benefit under Section 4.12 of this Act.

(d) For employees who earn less than $8.50 per hour, temporary income benefits for the first 26 weeks are payable at the rate of 75 percent of the difference between the employee's average weekly wage and the employee's weekly earnings after the injury, not to exceed the maximum weekly benefit under Section 4.11 of this Act or to be less than the minimum weekly benefit under Section 4.12 of this Act. The weekly temporary income benefit under this subsection may not exceed 100 percent of the employee's actual earnings for the previous year. A rebuttable presumption of the employee's actual earnings for the previous year shall be established by the following methods:

(1) the sum of the employee's wages as reported in the most recent four quarterly wage reports to the Texas Employment Commission shall be taken and divided by 52; or

(2) if the commission finds that the employee's most recent four quarters' earnings, as reflected in the Texas Employment Commission wage reports, are not representative of the employee's usual earnings, the commission shall use the single quarter of the most recent four quarters in which the employee's earnings were highest divided by 13; or

(3) if the Texas Employment Commission does not have a wage report reflecting at least one quarter's earnings due to the fact that the employee worked outside this state during the previous year, the commission shall determine the actual earnings for the previous year for purposes of this subsection from other credible evidence.

A presumption under this subsection may be rebutted by other credible evidence of the employee's actual earnings.

(e) The Texas Employment Commission shall provide information required under this section in the manner most efficient for transferring such information.

(f) For purposes of Subsections (c) and (d) of this section, if the employee is offered a bona fide position of employment that the employee is reasonably capable of performing, given the physical condition of the employee and the geographic accessibility of the position to the employee, the employee's weekly earnings after the injury are equivalent to the weekly wage for the position offered to the employee.

(g) The commission shall adopt rules establishing a presumption that maximum medical improvement has been reached based on a lack of medical improvement in the employee's condition.

SECTION 4.24. IMPAIRMENT GUIDELINES. The commission shall use the second printing, dated February, 1989, of the Guides to the Evaluation of Permanent Impairment, third edition, published by the American Medical Association for the determination of the existence and degree of an employee's impairment. All determinations of impairment under this Act, whether before the commission or in court, must be made in accordance with the above-named guide.

SECTION 4.25. ELIGIBILITY FOR RECOVERY AFTER MAXIMUM MEDICAL IMPROVEMENT. (a) Notwithstanding any other provision of this Act, a claimant is not entitled to recover impairment income benefits unless there is evidence of impairment based on an objective clinical or laboratory finding. If the finding of impairment is made by a doctor chosen by the claimant and the finding is contested, the objective clinical or laboratory finding on which the finding of impairment is based must be confirmable by a designated doctor or a doctor selected by the carrier.

(b) If a dispute exists as to whether the employee has reached maximum medical improvement, the commission shall direct the employee to be examined by a designated doctor selected by mutual agreement of the parties. If the parties are unable to agree on a designated doctor, the commission shall direct the employee to be examined by a designated doctor selected by the commission. The designated doctor shall report to the commission. The report of the designated doctor shall have presumptive weight, and the commission shall base its determination as to whether the employee has reached maximum medical improvement on that report unless the great weight of the other medical evidence is to the contrary.

SECTION 4.26. IMPAIRMENT INCOME BENEFITS. (a) All awards of impairment income benefits shall be based on an impairment rating using the impairment guidelines referred to in Section 4.24 of this Act.

(b) Impairment income benefits are paid weekly at the rate of 70 percent of the employee's average weekly wage, not to exceed the maximum weekly benefit under Section 4.11 of this Act or to be less than the minimum weekly benefit under Section 4.12 of this Act.

(c) An employee's entitlement to impairment income benefits begins the day after the employee reaches maximum medical improvement and continues until the earlier of:

(1) the expiration of a period computed at the rate of three weeks for each percentage point of impairment; or

(2) the death of the employee.

(d) After the employee has been certified by a doctor as having reached maximum medical improvement, the certifying doctor shall evaluate the condition of the employee and assign an impairment rating, using the impairment guidelines referred to in Section 4.24 of this Act. If the certification and evaluation are performed by a doctor other than the employee's treating doctor, the certification and evaluation shall be submitted to the treating doctor and the treating doctor shall indicate agreement or disagreement with the certification and evaluation. The certifying doctor shall issue a written report to the commission, the employee, and the insurance carrier certifying that maximum medical improvement has been

reached, stating the impairment rating, and providing any other information required by the commission. If the employee has not been certified as having reached maximum medical improvement prior to the expiration of 102 weeks from the date income benefits begin to accrue, the commission shall notify the treating doctor of the requirements of this section.

(e) The insurance carrier shall begin to pay the impairment income benefits not later than the fifth day after the date on which the insurance carrier receives the doctor's report certifying maximum medical improvement.

(f) The insurance carrier shall pay the employee impairment income benefits for a period based on the impairment rating or, if the insurance carrier disputes the impairment rating, based on its reasonable assessment of the correct rating.

(g) If the impairment rating is disputed, the commission shall direct the employee to be examined by a designated doctor selected by the mutual agreement of the parties. If the parties are unable to agree on a designated doctor, the commission shall direct the employee to be examined by a designated doctor selected by the commission. The designated doctor shall report to the commission in writing. If the parties agree on a designated doctor, the commission shall adopt the impairment rating made by the designated doctor. If the commission selects a designated doctor, the report of the designated doctor shall have presumptive weight and the commission shall base the impairment rating on that report unless the great weight of the other medical evidence is to the contrary, in which case the commission shall adopt the impairment rating of one of the other doctors.

SECTION 4.27. COMMUTATION OF IMPAIRMENT INCOME BENEFITS. The employee may elect to commute the remainder of impairment income benefits to which the employee is entitled if the employee has returned to work for at least three months, earning at least 80 percent of the employee's average weekly wage. If the employee elects to commute the impairment income benefits, the employee is not entitled to any additional income benefits for the compensable injury.

SECTION 4.28. SUPPLEMENTAL INCOME BENEFITS. (a) All awards of supplemental income benefits, whether by the commission or a court, shall be made in accordance with this section.

(b) An employee is entitled to supplemental income benefits as provided in this section if as of the expiration of the impairment period computed under Section 4.26(c)(1) of this Act:

(1) the employee has an impairment rating from the compensable injury of 15 percent or more as determined pursuant to this Act;

(2) the employee has not returned to work or has returned to work earning less than 80 percent of the employee's average weekly wage as a direct result of the employee's impairment;

(3) the employee has not elected to commute any portion of the impairment income benefits pursuant to Section 4.27 of this Act; and

(4) the employee has in good faith attempted to obtain employment commensurate with the employee's ability to work.

(c) If an employee is not entitled to supplemental income benefits at the time of payment of the final weekly impairment income benefit because the employee is earning at least 80 percent of the employee's average weekly wage, the employee may become entitled to supplemental income benefits at any time within one year after the impairment income benefit period ends if:

(1) the employee earns wages that are less than 80 percent of the employee's average weekly wage for a period of at least 90 days;

(2) the employee meets the other requirements of Subsection (b) of this section; and

(3) the employee's decrease in earnings is a direct result of the employee's impairment from the compensable injury.

(d) If an employee earns wages that are at least 80 percent of the employee's average weekly wage for a period of at least 90 days during which the employee is receiving supplemental income benefits, the employee ceases to be entitled to supplemental income benefits for the filing period.

(e) Supplemental income benefits that have been terminated under Subsection (d) of this section shall be reinitiated when the employee satisfies the conditions enumerated in Subsection (c) of this section and files the statement required under Subsection (k) of this section.

(f) Notwithstanding any other provision of this section, if an employee is not entitled to supplemental income benefits for 12 consecutive months, the employee ceases to be entitled to any additional income benefits for the compensable injury.

(g) If the employee is discharged within 12 months of losing entitlement under Subsection (f) of this section, the commission may reinstate benefits if the commission finds that the employee was discharged at that time with the intent to deprive the employee of supplemental income benefits.

(h) During the period that impairment income benefits or supplemental income benefits are being paid, the commission has the affirmative duty to determine at least annually whether any extended unemployment or underemployment is a direct result of the employee's impairment. To accomplish this purpose, the commission may require periodic reports from the employee and the insurance carrier, and it may, at the insurance carrier's expense, require any physical or other examinations, vocational assessments, or other tests or diagnoses necessary to perform its duty under this section.

(i) Not more than once in each 12 calendar months, the employee and the insurance carrier may each request the commission to review the status of the employee and determine whether the employee's unemployment or underemployment is a direct result of impairment from the compensable injury. Either party may request a benefit review conference to contest a determination of the commission at any time, subject only to the limits placed on the insurance carrier by Subsection (l) of this section.

(j) If the commission, in its discretion, determines that an employee who is entitled to supplemental income benefits could be materially assisted in returning to employment or returning to employment more nearly approximating preinjury employment by vocational rehabilitation or training, the commission shall refer the employee to the Texas Rehabilitation Commission with a recommendation for appropriate services. An employee refusing services or refusing to cooperate with services provided under this subsection loses entitlement to supplementary income benefits.

(k) After the initial determination of supplemental income benefits by the commission, the employee must file a statement with the insurance carrier stating that the employee has earned less than 80 percent of the employee's average weekly wage as a direct result of the employee's impairment, stating the amount of wages the employee earned in the filing period, and stating that the employee has in good faith sought employment commensurate with the employee's ability to work. The statement must be filed quarterly on a form and in the manner prescribed by the commission. The commission may modify the filing period as appropriate to an individual case. Failure to file a statement under this subsection relieves the insurance carrier of liability for supplemental income benefits for the period during which a statement is not filed.

(l)(1) The insurance carrier shall begin payment of supplemental income benefits not later than the seventh day after the expiration date of the impairment income benefit period and shall continue to pay timely. The insurance carrier may request a benefit review conference for the purpose of contesting the employee's entitlement to or the amount of supplemental income benefits. If the insurance

carrier fails to make such request within 10 days after the expiration of the impairment income benefit period or within 10 days after receipt of the employee's statement, the insurance carrier waives the right to contest entitlement to and the amount of supplemental income benefits for that period of supplemental income benefits.

(2) If the insurance carrier disputes a commission determination that the employee is entitled to supplemental income benefits or the amount of supplemental income benefits due and the employee prevails on any such disputed issue, the insurance carrier shall be liable for reasonable and necessary attorney's fees incurred by the employee as a result of the insurance carrier's dispute and for any supplemental income benefits accrued but not paid and interest on that amount, according to Section 4.13 of this Act. Attorney's fees awarded under this subdivision are subject to the provisions of Section 4.09 of this Act except Subsections (b) and (e).

(m) Supplemental income benefits are calculated on a quarterly basis and paid on a monthly basis. For purposes of calculating supplemental income benefits, 80 percent of the employee's average weekly wage as computed pursuant to Section 4.10 and the average wages the employee has earned per week are compared quarterly. For purposes of this section, if the employee is offered a bona fide position of employment that the employee is capable of performing, given the physical condition of the employee and the geographic accessibility of the position to the employee, the employee's weekly wages are deemed equivalent to the weekly wages for the position offered to the employee.

(n) Supplemental income benefits are payable at the rate of 80 percent of the difference between 80 percent of the employee's average weekly wage determined pursuant to Section 4.10 of this Act and the weekly wages the employee has earned during the reporting period, not to exceed the maximum weekly income benefit under Section 4.11 of this Act.

SECTION 4.29. DURATION OF TEMPORARY, IMPAIRMENT, AND SUPPLEMENTAL INCOME BENEFITS. The employee's eligibility for temporary income benefits, impairment income benefits, and supplemental income benefits terminates on the expiration of 401 weeks from the date of injury.

SECTION 4.30. CONTRIBUTING INJURY. (a) At the request of the insurance carrier, the commission may order that impairment income benefits and supplemental income benefits be reduced in a proportion equal to the proportion of a documented impairment that resulted from earlier compensable injuries.

(b) The commission shall consider the cumulative impact of the compensable injuries on the employee's overall impairment in determining a reduction under this section.

(c) If the combination of the compensable injuries results in an injury compensable under Section 4.31 of this Act, the benefits for that injury shall be paid as provided by Section 4.47 of this Act.

SECTION 4.31. LIFETIME INCOME BENEFITS. (a) Income benefits shall be paid until the death of the employee for:

(1) total and permanent loss of sight in both eyes;

(2) loss of both feet at or above the ankle;

(3) loss of both hands at or above the wrist;

(4) loss of one foot at or above the ankle and the loss of one hand at or above the wrist;

(5) an injury to the spine that results in permanent and complete paralysis of both arms, both legs, or one arm and one leg; or

(6) an injury to the skull resulting in incurable insanity or imbecility.

(b) The total and permanent loss of use of a member under Subsection (a) of this section is considered equal to the loss of the member.

(c) Lifetime income benefits are payable at the rate of 75 percent of the employee's average weekly wage. Lifetime benefits may not exceed the maximum weekly benefit, except that benefits being paid shall be increased three percent a year notwithstanding the maximum weekly benefit.

(d) In no other case may the period of income benefits be greater than 401 weeks from the date of injury.

SECTION 4.32. ADVANCE OF BENEFITS BASED ON HARDSHIP. (a) The commission may grant an employee who is suffering financial hardship advances as provided by this Act against the amount of income benefits to which the employee may be entitled, if there is a likelihood that income benefits will be paid in the future. Advances may be ordered before or after the claimant attains maximum medical improvement. An insurance carrier shall pay any advance ordered.

(b) An employee who desires an advance shall apply to the commission on a form prescribed by the commission describing the hardship that is the grounds for the advance.

(c) An advance under this section may not exceed an amount equal to four times the maximum weekly benefit for temporary income benefits as computed in Section 4.11 of this Act. The commission may not grant more than three advances to a particular employee based on the same injury.

(d) The commission may not grant an advance to an employee who is receiving, as of the date of the application under Subsection (b) of this section, at least 90 percent of the employee's net preinjury wages under Section 4.06 or 4.321 of this Act.

SECTION 4.321. ACCELERATION OF IMPAIRMENT INCOME BENEFITS. (a) On receipt of a written request by an employee and approval of the request by the commission, the insurance carrier shall accelerate the payment of impairment income benefits made to that employee. The accelerated payment may not exceed a rate of payment equal to that of the employee's net preinjury wage.

(b) The commission shall approve the request and order the acceleration of the benefits if the commission determines that the acceleration is required to relieve hardship and is in the overall best interest of the employee.

(c) The duration of the impairment income benefits to which the employee is entitled shall be reduced to offset the increased payments caused by the acceleration, taking into consideration the discount for present payment at the rate provided under Section 1.04 of this Act.

(d) The commission may adopt rules and prescribe forms as necessary to implement this section.

SECTION 4.33. SETTLEMENTS. (a) A settlement may not provide for payment of any benefits in a lump sum except as provided in Section 4.27 of this Act.

(b) The employee's right to medical benefits as provided in Section 4.61 of this Act shall not be limited or terminated.

(c) A settlement or agreement resolving an issue of impairment may not be made before the employee reaches maximum medical improvement and must adopt an impairment rating made pursuant to Section 4.26 of this Act.

(d) A settlement takes effect on the date it is approved by the director of the division of hearings.

(e) The director of the division of hearings shall approve a settlement if the director is satisfied that:

(1) the settlement accurately reflects the terms of the agreement between the parties;

(2) the settlement reflects adherence to all appropriate provisions of law and the policies of the commission; and

(3) under the law and facts, the settlement is in the best interest of the claimant.

(f) A settlement must be signed by the director of the division of hearings and all parties to the dispute.

(g) A party to a settlement may withdraw acceptance of the settlement at any time before its effective date.

(h) Any settlement that has not been approved or rejected within 15 days after submission to the director of the division of hearings shall be deemed to be approved.

[Sections 4.34-4.40 reserved for expansion]

CHAPTER C. DEATH AND BURIAL BENEFITS

SECTION 4.41. DEATH BENEFITS. The insurance carrier shall pay death benefits to the legal beneficiary of the employee if the compensable injury results in death. Death benefits are payable at the rate of 75 percent of the employee's average weekly wage, not to exceed the maximum weekly benefit under Section 4.11 of this Act.

SECTION 4.42. DISTRIBUTION OF DEATH BENEFITS. (a) Death benefits shall be paid to the legal beneficiaries according to the priority established by this section.

(b) If there is no eligible child or grandchild, all the death benefits shall be paid to the eligible spouse.

(c) If there is no eligible spouse, the death benefits shall be paid to the eligible children or grandchildren.

(d) If there is an eligible child or grandchild and an eligible spouse, half of the death benefits shall be paid to the eligible spouse and half shall be paid in equal shares to the eligible children. If an eligible child has predeceased the employee, death benefits that would have been paid to that child shall be paid in equal shares per stirpes to the children of the deceased child.

(e) If the employee is not survived by an eligible spouse, child, or grandchild, the death benefits shall be paid to a surviving dependent who is a parent, stepparent, sibling, or grandparent of the deceased. If more than one of those dependents survives the deceased, the death benefits shall be divided among them in equal shares.

(f) If the employee is not survived by legal beneficiaries, the death benefits shall be paid to the subsequent injury fund under Section 2.26 of this Act.

(g) For the purposes of this section:

(1) "Eligible spouse" means the surviving spouse of the deceased employee unless the spouse abandoned the employee for more than one year immediately preceding the death without good cause, as determined by the commission.

(2) "Eligible child" means a child of the deceased employee if the child is:

(A) a minor;

(B) enrolled as a full-time student in an accredited educational institution and is less than 25 years of age;

(C) because of a physical or mental handicap, a dependent of the deceased employee at the time of death; or

(D) a child who is otherwise a dependent of the deceased employee at the time of death.

(3) "Eligible grandchild" means a grandchild whose parent is not an eligible child and who is a dependent of the deceased employee.

SECTION 4.43. DURATION OF DEATH BENEFITS. (a) Entitlement to death benefits begins on the day after the date of death.

(b) An eligible spouse is entitled to receive death benefits for life or until remarriage. On remarriage, the eligible spouse is entitled to receive 104 weeks of death benefits, commuted as provided by commission rule.

(c) A child who is eligible for death benefits because the child is a minor on the date of the employee's death is entitled to receive the benefits until the child attains the age of 18 years. If at age 18 the child is enrolled as a full-time student in an accredited educational institution, the child is entitled to continue to receive the benefits until the earliest of:

(1) the date on which the child ceases, for a second consecutive semester, to be enrolled as such a student;

(2) the date on which the child attains the age of 25 years; or

(3) the date on which the child dies.

(d) A child who is eligible for death benefits because the child on the date of the employee's death is enrolled as a full-time student in an accredited educational institution is entitled to receive the benefits until the earliest of:

(1) the date on which the child ceases, for a second consecutive semester, to be enrolled as such a student;

(2) the date on which the child attains the age of 25 years; or

(3) the date on which the child dies.

(e) A child who is eligible for death benefits because the child on the date of the employee's death is dependent because of a physical or mental handicap is entitled to receive the benefits until the earlier of:

(1) the date on which the child is no longer handicapped; or

(2) the date on which the child dies.

(f) A child who is otherwise eligible for death benefits as a dependent of the deceased employee is entitled to receive death benefits until the earlier of:

(1) the death of the child; or

(2) the expiration of 364 weeks of death benefit payments.

(g) An eligible grandchild who is a minor at the time of death is entitled to receive death benefits until the grandchild dies or ceases to be a minor.

(h) An eligible grandchild who is not a minor at the time of death is entitled to receive death benefits until the earlier of:

(1) the death of the grandchild; or

(2) the expiration of 364 weeks of death benefit payments.

(i) Any other person entitled to death benefits is entitled to receive death benefits until the earlier of:

(1) the death of the beneficiary; or

(2) the expiration of 364 weeks of death benefit payments.

SECTION 4.44. REDISTRIBUTION OF DEATH BENEFITS. (a) If a legal beneficiary dies or otherwise becomes ineligible for death benefits, benefits shall be redistributed to the remaining legal beneficiaries in accordance with Sections 4.42 and 4.43 of this Act.

(b) If a spouse ceases to be eligible because of remarriage, the benefits payable to the remaining legal beneficiaries shall remain constant for 104 weeks, and then the spouse's share of benefits shall be redistributed in accordance with this section.

(c) If all legal beneficiaries, other than the subsequent injury fund, cease to be eligible and the insurance carrier has not made 364 weeks of full death benefit payments, including the remarriage payment, the insurance carrier shall pay the difference between the weeks paid and 364 weeks to the subsequent injury fund.

SECTION 4.45. EFFECT OF DISPUTE AS TO BENEFICIARY. (a) In all cases involving fatal injuries where the insurance carrier admits liability on all issues involved and tenders payments of maximum benefits in writing under this Act while the death benefits claim of such beneficiaries is pending before the commission, then no attorney's fee shall be allowed.

(b) On settlement of a case in which the insurance carrier admits liability for death benefits but a dispute exists as to the proper beneficiary or beneficiaries, the settlement shall be paid in periodic payments as provided by law, with a reasonable attorney's fee based on time and expenses not to exceed 25 percent of the settlement. The attorney's fee shall be paid periodically.

SECTION 4.46. BURIAL BENEFITS. (a) If death results from a compensable injury, the insurance carrier shall pay to the person who incurred liability for the costs of burial the lesser of:

(1) the actual costs incurred for reasonable burial expenses; or

(2) $2,500.

(b) The insurance carrier shall also pay the reasonable cost of transporting the body if the employee died away from the usual place of employment, not to exceed the cost equivalent to transporting the body to the employee's usual place of employment.

SECTION 4.47. SUBSEQUENT INJURY FUND BENEFITS. If a subsequent compensable injury, together with the effects of a previous injury, results in a condition for which the injured employee is entitled to lifetime income benefits, the insurance carrier is liable for the payment of benefits for the subsequent injury only to the extent that the subsequent injury would have entitled the employee to benefits had the previous injury not existed. The subsequent injury fund shall compensate the employee for the remainder of the lifetime income benefits to which the employee is entitled.

SECTION 4.48. AUTOPSY. If in a claim for death benefits based on an occupational disease an autopsy is necessary to determine the cause of death, the commission may, after opportunity for hearing, order the legal beneficiaries of a deceased employee to permit an autopsy. A legal beneficiary is entitled to have a representative present at an autopsy ordered under this section. The commission shall require the insurance carrier to pay the costs of a procedure ordered under this section.

[Sections 4.49-4.60 reserved for expansion]

CHAPTER D. MEDICAL BENEFITS

SECTION 4.61. ENTITLEMENT TO MEDICAL BENEFITS. (a) An injured employee is entitled to all health care reasonably required by the nature of the compensable injury as and when needed. Medical benefits are payable from the date of injury arising out of and in the course and scope of employment. The employee is specifically entitled to health care that:

(1) cures or relieves the effects naturally resulting from the compensable injury;

(2) promotes recovery; or

(3) enhances the ability of the employee to return to or retain employment.

(b) Except in an emergency, all health care must be approved or recommended by the employee's treating doctor.

(c) An insurance carrier's liability for medical benefits may not be limited or terminated by agreement or settlement.

SECTION 4.62. RIGHT TO SELECT DOCTOR. (a) The injured employee is entitled to the employee's initial choice of a doctor. An initial choice of a doctor made by the employer or the insurance carrier or medical treatment provided to an injured employee in an emergency situation does not constitute the employee's choice for purposes of this section. The employee may change doctors once on submission to the commission in writing of the reasons for the employee's change in doctors.

(b) A third or subsequent doctor selected by the employee is subject to the approval of the insurance carrier or the commission.

(c) This section expires December 31, 1992.

SECTION 4.63. SELECTION OF DOCTOR. (a) This section takes effect January 1, 1993.

(b) Except in an emergency, the commission shall require the employee to receive medical treatment from a doctor chosen from a list of doctors approved by the commission. The employee is entitled to the employee's initial choice of a doctor from the commission's list.

(c) If the employee is dissatisfied with the initial choice of doctor from the commission's list, the employee may notify the commission and request authority to select an alternate doctor. The notification should be in writing stating the reasons for the change, except notification may be by telephone when a medical necessity exists for immediate change.

(d) The commission will prescribe criteria by which the commission will grant the employee authority to select an alternate doctor. As criteria, the commission may include but is not limited to:

(1) whether treatment by the current doctor is medically inappropriate;

(2) the professional reputation of the doctor;

(3) whether the employee is receiving appropriate medical care to reach maximum medical improvement; and

(4) whether a conflict exists or has developed between the employee and the doctor to the extent that the doctor-patient relationship is jeopardized or impaired.

(e) Any change of doctor may not be made for the purpose of securing a new impairment rating or medical report.

(f) For the purposes of this section, all doctors duly licensed in this state are included on the list at the time of the effective date of this section or on their licensure in this state. Doctors not licensed in this state but licensed in another state or jurisdiction who treat employees may apply with the commission for inclusion on the approved list.

(g) The commission shall establish criteria for deleting a doctor from the approved list. The criteria may include anything considered relevant by the commission and may include but are not limited to:

(1) sanctions of the doctor by the commission for violations of Article 10 of this Act;

(2) sanctions by the Medicare or Medicaid program which are based on substandard medical care, overcharging, or overutilization of medical services;

(3) evidence from the commission's medical records that the doctor's charges, fees, diagnoses, or treatments are substantially different from those the commission finds to be fair and reasonable; and

(4) suspension of a doctor's license by the appropriate licensing authority.

(h) The commission shall establish procedures for application for reinstatement to the list.

SECTION 4.64. EXCEPTIONS. The following do not constitute the selection of an alternate doctor for the purposes of Sections 4.62 and 4.63 of this Act:

(1) a referral made by a doctor selected by the employee if the referral is medically reasonable and necessary;

(2) services ancillary to surgery;

(3) a second or subsequent opinion only on the appropriateness of the diagnosis or treatment;

(4) a selection made because the original physician dies, retires, or becomes otherwise unavailable or unable to provide medical care to the employee; or

(5) a change of residence by the employee that necessitates a change of doctors.

SECTION 4.65. EFFECT OF EMPLOYEE NONCOMPLIANCE. Except as otherwise provided by this chapter and after notice and an opportunity for hearing, the commission may relieve the insurance carrier of liability for health care furnished by a health care provider or any other person selected in a manner inconsistent with the requirements of this chapter.

SECTION 4.66. REQUIRED REPORTS AND RECORDS BY HEALTH CARE PROVIDER. (a) The commission by rule shall adopt reasonable requirements for reports and records required to be filed with the commission or provided to the injured employee, the employee's attorney, or the insurance carrier by health care providers.

(b) The commission by rule shall adopt reasonable requirements for reports and records to be made available to other health care providers to prevent unnecessary duplication of tests and examinations.

(c) The treating doctor shall be responsible for maintaining efficient utilization of health care.

(d) A health care facility shall, on request of either the injured employee, the employee's attorney, or the insurance carrier, furnish records pertaining to treatment or hospitalization for which compensation is being sought. All charges for the furnishing of reports and records shall be subject to regulation by the commission; provided, however, such charges shall in no event be less than the fair and reasonable charge for the furnishing of the reports and records. A health care facility may disclose records to the insurance carrier of the affected employer pertaining to the diagnosis or treatment of an injured employee for purposes of determining the amount of payment or the entitlement to payment without the authorization of the injured employee.

SECTION 4.67. SECOND OPINION ON SPINAL SURGERY. (a) Except in situations of medical emergency, the insurance carrier is liable for medical costs related to spinal surgery only under the following conditions:

(1) the employee obtains a second opinion from a doctor approved by the insurance carrier or the commission before surgery and the doctor rendering the second opinion concurs with the treating doctor's recommendation;

(2) the insurance carrier waives the right to an examination or fails to request an examination not later than the 14th day after the date of the notification that surgery is recommended; or

(3) the commission determines that extenuating circumstances are present and orders payment for surgery.

(b) The commission shall make rules necessary to ensure that an examination required under this section is performed without undue delay.

SECTION 4.68. PAYMENT OF HEALTH CARE PROVIDER. (a) Unless the amount of the payment or the entitlement to payment is disputed, an insurance carrier shall pay a fee charged by a health care provider not later than the 45th day after the date of receipt by the insurance carrier of a charge for services rendered by the provider.

(b) If the insurance carrier disputes the amount of payment and requests an audit of the services rendered, the insurance carrier shall pay 50 percent of the health care provider's statement of charges not later than the 45th day after the date of receipt of the statement.

(c) If the insurance carrier denies liability or entitlement to payment and an accident or health insurance company provides benefits to the employee for medical or other health care services, the right to recover that amount may be assigned by the employee to the accident or health insurance company.

(d) If an insurance carrier disputes the amount of payment or the entitlement to payment, the insurance carrier shall send to the commission, the health care

provider, and the injured employee a report that sufficiently explains the reasons for reduction or denial of payment for health care services rendered to the employee and shall be entitled to a hearing as provided in Section 8.26(d) of this Act.

SECTION 4.69. PHARMACEUTICAL SERVICES. (a) A health care practitioner providing care to an employee under this chapter shall prescribe for the employee any necessary prescription drugs in accordance with applicable state law.

(b) An insurance carrier may not require an employee to use pharmaceutical services designated by the carrier.

ARTICLE 5. COMPENSATION PROCEDURE

CHAPTER A. INJURY RECORDS, REPORTS, AND CLAIMS

SECTION 5.01. NOTICE OF INJURY TO EMPLOYER; CLAIM FOR COMPENSATION. (a) An employee or a person acting on the employee's behalf shall notify the employer of an injury not later than the 30th day after the date on which the injury occurs. If an injury is an occupational disease, the employee or person shall notify the employer of the injury not later than the 30th day after the date on which the employee knew or should have known that the injury may be related to the employment.

(b) An employee or a person acting on the employee's behalf shall file with the commission a claim for compensation. For an injury, the claim must be filed not later than one year after the date of the occurrence of the injury. For an occupational disease, the claim must be filed not later than one year after the date on which the employee knew or should have known that the disease was related to the employment.

(c) The notice required by Subsection (a) of this section may be given to the employer or any employee of the employer who holds a supervisory or management position.

(d) If the injury is an occupational disease, for purposes of this section the employer is the person who employed the employee on the date of last injurious exposure to the hazards of the disease.

SECTION 5.02. EFFECT OF FAILURE TO NOTIFY. An employee's failure to notify the employer as required under Section 5.01(a) of this Act relieves the employer and the employer's insurance carrier of liability under this Act unless:

(1) the employer or person eligible to receive notification under Section 5.01(c) of this Act or the insurance carrier has actual knowledge of the injury;

(2) the commission determines that good cause exists for failure to give notice in a timely manner; or

(3) the employer or insurance carrier does not contest the claim.

SECTION 5.03. EFFECT OF FAILURE TO FILE CLAIM. An employee's failure to file a claim for compensation with the commission as required under Section 5.01(b) of this Act relieves the employer and the employer's insurance carrier of liability under this Act unless:

(1) good cause exists for failure to file a claim in a timely manner; or

(2) the employer or insurance carrier does not contest the claim.

SECTION 5.04. RECORD OF INJURY OR DEATH; ADMINISTRATIVE VIOLATION. (a) Each employer shall maintain a record of injuries to employees as reported by an employee or otherwise made known to the employer. These records shall be made available to the commission at reasonable times and under conditions as prescribed by the commission.

(b) The commission may adopt rules relating to the information that must be contained in an employer record.

(c) Information contained in a record maintained under this section may not be considered an admission by the employer that the injury did in fact occur or that any fact maintained in the record is true.

(d) A person who fails to comply with this section commits a Class D administrative violation.

SECTION 5.05. EMPLOYER REPORT OF INJURY; ADMINISTRATIVE VIOLATION. (a) If an injury results in the absence of the employee from work for more than one day or if the employee notifies the employer of an occupational disease as provided by Section 5.01 of this Act, the employer shall file a written report with the commission and the insurance carrier. The report must be mailed or delivered to the commission and the insurance carrier not later than the eighth day after:

(1) the employee's absence from work for one day due to an injury; or

(2) the employer receives notice as provided by Section 5.01(a) of this Act that the employee has contracted an occupational disease.

(b) This report and any report made under Section 7.03(b) of this Act may not be considered admissions or evidence against the employer or the insurance carrier in any proceeding before the commission or a court in which the facts set out in that report are contradicted by the employer or insurance carrier.

(c) The employer shall file subsequent reports as required by commission rule.

(d) The commission may adopt rules relating to the information that must be contained in an employer report.

(e) Unless good cause exists for failure to comply, a person who fails to comply with this section commits a Class D administrative violation.

SECTION 5.06. LIMITATION TOLLED. If the employer or insurance carrier has been given notice or has knowledge of an injury or death of an employee and the employer or insurance carrier fails, neglects, or refuses to file a report as required under Section 5.05 of this Act, the limitations in Section 5.01 or 5.07 of this Act with respect to the filing of a claim for compensation do not begin to run against the claim of the injured employee or the employee's beneficiaries who are entitled to compensation, or in favor of the employer or insurance carrier, until the report has been furnished as required under Section 5.05 of this Act.

SECTION 5.07. CLAIMS FOR DEATH BENEFITS. (a) To claim death benefits, a person must file a claim with the commission not later than the first anniversary of the date of the employee's death.

(b) Noncompliance with this requirement shall bar the claim unless:

(1) the person is a minor or incompetent; or

(2) good cause exists for the failure to file a claim under this section.

(c) A separate claim must be filed for each beneficiary, unless the claim expressly includes or is made on behalf of another person.

SECTION 5.08. SUBCLAIMS. A person may file a claim with the commission as a subclaimant if the person has:

(1) provided compensation, including health care provided by a health care insurer, directly or indirectly, to or for an employee or legal beneficiary; and

(2) sought and been refused reimbursement from the insurance carrier.

SECTION 5.09. INFORMATION TO EMPLOYEE OR LEGAL BENEFICIARY. Immediately on receiving notice of injury or death from any person, the commission shall mail to the employee or legal beneficiary a clear and concise description of the services provided by the commission, including the services of the ombudsman program, the commission procedures, and the person's rights and responsibilities under this Act.

SECTION 5.10. EMPLOYER BILL OF RIGHTS. Immediately on receiving notice of injury or death from any person, the commission shall mail to the employer a description of the services provided by the commission, the

commission procedures, and the employer's rights and responsibilities under this Act. The commission is not required to provide this information to an employer more than once in any calendar year. The information provided to the employer under this section shall include a clear statement of the following rights of the employer:

(1) the right to be present at all administrative proceedings relating to an employee's claim;

(2) the right to present relevant evidence relating to an employee claim at any proceeding;

(3) the right to report suspected fraud;

(4) the right to contest the compensability of an injury if the insurance carrier accepts liability for the payment of benefits;

(5) the right to receive notice, after making a written request to the insurance carrier, of any proposal to settle a claim or any administrative or judicial proceeding relating to the resolution of a claim; and

(6) the right to contest the failure of the insurance carrier to provide accident prevention services under Article 7 of this Act.

SECTION 5.11. VOCATIONAL REHABILITATION REFERRAL. (a) The commission shall analyze each employer report of injury received under this chapter to determine if the injured employee would be assisted by vocational rehabilitation. If the commission determines that the injured employee would be assisted, the commission shall notify the injured employee in writing of the services and facilities available through the Texas Rehabilitation Commission and private providers of vocational rehabilitation. The commission shall notify the Texas Rehabilitation Commission and the affected insurance carrier that the injured employee has been identified as one who could be assisted by vocational rehabilitation.

(b) The commission shall cooperate with the Texas Rehabilitation Commission and private providers of vocational rehabilitation in the provision of services and facilities to employees by that commission.

(c) A private provider of vocational rehabilitation services may register with the commission.

[Sections 5.12-5.20 reserved for expansion]

CHAPTER B. PAYMENT OF COMPENSATION

SECTION 5.21. INITIATION OF COMPENSATION; INSURANCE CARRIER'S REFUSAL. (a) An insurance carrier shall initiate compensation under this Act promptly. If the insurance carrier does not contest the compensability of the injury on or before the 60th day after the date on which the insurance carrier is notified of the injury, the insurance carrier waives its right to contest compensability. The initiation of payments by an insurance carrier does not affect the right of the insurance carrier to continue to investigate or deny the compensability of the injury during the 60-day period. If the insurance carrier does not initiate payment or file a notice of refusal in a timely manner as required in Subsection (b) of this section, the insurance carrier commits a Class B administrative violation. Each day of noncompliance constitutes a separate violation. The insurance carrier shall notify the commission in writing of the initiation of income or death benefit payments in the manner prescribed by commission rules. An insurance carrier shall be allowed to reopen the issue of compensability if there is a finding of evidence that could not have been reasonably discovered earlier.

(b) Not later than the seventh day after the date on which the insurance carrier receives written notice of the injury, the insurance carrier either shall begin the payment of benefits as required under this Act or shall notify the commission and the employee in writing of its refusal to pay and advise the employee of the right

to request a benefit review conference and the means to obtain additional information from the commission.

(c) The insurance carrier's notice must specify the grounds for the refusal. The grounds specified in the notice constitute the only basis for the insurance carrier's defense on the issue of compensability in a subsequent proceeding, unless the defense is based on newly discovered evidence that could not reasonably have been discovered at an earlier date. If the commission determines that the insurance carrier did not have reasonable grounds for the refusal, the insurance carrier is subject to a Class B administrative violation.

SECTION 5.22. COMPENSATION PAID; ADMINISTRATIVE VIOLATION. (a) The insurance carrier shall continue to pay compensation promptly as and when it accrues without final decision, order, or other action of the commission, except as otherwise provided. Compensation shall be paid solely to the order of the employee or the employee's beneficiaries.

(b) An insurance carrier that fails to comply with this section commits a Class B administrative violation. Each day of noncompliance is a separate violation.

(c) An insurance carrier that commits multiple violations of this section commits a Class A administrative violation and is subject to the sanctions provided under Section 10.07(d) of this Act and to revocation of the right to practice under the workers' compensation laws of this state.

SECTION 5.23. COMPENSATION TERMINATED OR REDUCED; FILING REQUIRED. (a) Not later than the 10th day after the date on which compensation is terminated or reduced, the insurance carrier shall file notice of that fact, including the reasons for the termination or reduction, with the commission.

(b) If the commission determines that the insurance carrier did not have reasonable grounds for the termination or reduction, the insurance carrier is subject to a Class B administrative violation.

[Sections 5.24-5.40 reserved for expansion]

CHAPTER C. OMBUDSMAN PROGRAM

SECTION 5.41. OMBUDSMAN PROGRAM. (a) The commission shall establish an ombudsman program to assist injured workers and persons claiming death benefits in obtaining benefits under this Act.

(b) Ombudsmen shall meet with or otherwise provide information to injured workers, investigate complaints, and communicate with employers, insurance carriers, and health care providers on behalf of injured workers. An ombudsman shall otherwise assist unrepresented claimants, employers, and other parties to enable them to protect their rights in the workers' compensation system. At least one specially qualified employee in each office shall be designated an ombudsman, and duties under this chapter shall be that person's primary responsibility.

(c) Each employer shall notify its employees of this service in a manner prescribed by the commission. An employer's failure to comply with this subsection constitutes a Class C administrative violation.

SECTION 5.42. PUBLIC INFORMATION. The commission shall take the necessary steps to widely disseminate information about the ombudsman program.

ARTICLE 6. ADJUDICATION OF DISPUTES

CHAPTER A. GENERAL PROVISIONS

SECTION 6.01. APPLICATION OF ADMINISTRATIVE PROCEDURE AND TEXAS REGISTER ACT. (a) Except as otherwise provided by this article, the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) does not apply to any proceeding conducted under this article.

(b) Each proceeding before the commission to determine the liability of an insurance carrier for compensation for an injury or death under this Act is governed by this article.

SECTION 6.02. PERSONNEL, DIVISION OF HEARINGS. (a) The division of hearings shall conduct benefit review conferences, contested case

hearings, arbitration, and appeals within the agency related to workers' compensation claims.

(b) Benefit review officers shall conduct benefit review conferences. The commission shall institute and maintain an education and training program for benefit review officers who must be employees of the commission. The officers shall be trained in the principles and procedures of dispute mediation, and the commission is authorized and directed to consult or enter into contracts with the Federal Mediation and Conciliation Service or other appropriate organizations to accomplish this purpose.

(c) Hearing officers shall conduct contested case hearings. Hearing officers shall be licensed to practice law in Texas.

(d) Arbitrators shall be employees of the commission, except that the commission may contract with qualified arbitrators on a determination of special need. The commission shall establish lists of arbitrators. An arbitrator must:

(1) be a member of the National Academy of Arbitrators;

(2) be included on an approved list of the American Arbitration Association or Federal Mediation and Conciliation Service; or

(3) meet qualifications established by the commission by rule and be approved by an affirmative vote of at least two commission members representing employers of labor and at least two commission members representing wage earners.

(e) The commission shall require that each arbitrator have appropriate training in the workers' compensation laws of this state. The commission shall establish procedures to carry out this subsection.

(f) The commission shall review the lists of arbitrators annually and shall determine if each arbitrator is fair and impartial and makes awards that are consistent with and in accordance with this Act and the rules of the commission. The commission shall remove an arbitrator if after review the arbitrator does not receive an affirmative vote of at least two commission members representing employers of labor and at least two commission members representing wage earners.

(g) Appeals judges, in panels of three, shall conduct administrative appeals proceedings. Appeals judges shall be licensed to practice law in Texas. Appeals judges may not conduct benefit review conferences or contested case hearings.

SECTION 6.03. VENUE FOR CERTAIN ADMINISTRATIVE PROCEEDINGS. Unless the commission determines that good cause exists for the selection of a different location, a benefit review conference or a contested case hearing may not be conducted at a site more than 75 miles from the claimant's residence at the time of the injury. Unless the assigned arbitrator determines that good cause exists for the selection of a different location, arbitration may not be conducted at a site more than 75 miles from the claimant's residence at the time of the injury. All appeals panel proceedings shall be conducted in Travis County.

SECTION 6.04. REPRESENTATION AT ADMINISTRATIVE PROCEEDINGS. A claimant may be represented at a benefit review conference, a contested case hearing, or arbitration by an attorney or may be assisted by an individual of the claimant's choice who does not work for an attorney or receive a fee. An employee of an attorney may represent a claimant if that employee is a relative of the claimant and no fee is received. An insurance carrier may be represented by an attorney or adjuster.

[Sections 6.05-6.10 reserved for expansion]

CHAPTER B. BENEFIT REVIEW CONFERENCES

SECTION 6.11. PURPOSE OF BENEFIT REVIEW CONFERENCE. A benefit review conference is a nonadversarial, informal dispute resolution proceeding designed to:

(1) explain, orally and in writing, the rights of the respective parties to a workers' compensation claim and the procedures necessary to protect those rights;

(2) discuss the facts of the claim, review available information in order to evaluate the claim, and delineate the disputed issues; and

(3) mediate and resolve disputed issues by mutual agreement of the parties in accordance with this Act and the policies of the commission.

SECTION 6.12. REQUEST FOR BENEFIT REVIEW CONFERENCE. (a) On receipt of a request from a party or on its own motion, the commission may direct the parties to a disputed workers' compensation claim to meet in a benefit review conference to attempt to reach agreement on disputed issues involved in the claim.

(b) At the time a benefit review conference is scheduled, the commission shall schedule a contested case hearing to be held within 60 days of the benefit review conference if the disputed issues are not resolved at the benefit review conference.

(c) The commission by rule shall adopt guidelines relating to claims that do not require a benefit review conference and may proceed directly to a contested case hearing or arbitration. Except as otherwise provided by law or commission rule, unless a benefit review conference is conducted as provided by this section the parties are not entitled to a contested case hearing or arbitration on the claim.

(d) The commission by rule shall provide for expedited proceedings in cases in which compensability or liability for essential medical treatment is in dispute.

(e) The commission shall by rule prescribe the time within which a benefit review conference shall be scheduled, and written notice of the benefit review conference shall be sent by the commission to the parties to the claim and the employer. A party who fails to attend the conference without good cause as determined by the benefit review officer commits a Class D administrative violation. When a benefit review conference is scheduled, unless the benefit review officer determines that good cause exists to reschedule the benefit review conference, the benefit review conference shall be conducted even though a party fails to attend.

SECTION 6.13. DUTIES OF THE BENEFIT REVIEW OFFICER. (a) The benefit review officer shall:

(1) mediate disputes between the parties and assist in the adjustment of the claim consistent with this Act and the policies of the commission;

(2) thoroughly inform all parties of their rights and responsibilities under this Act, especially in cases in which the employee is not represented by an attorney or other representative; and

(3) ensure that all documents and information relating to the employee's wages, medical condition, and any other information pertinent to the resolution of disputed issues are contained in the claim file at the conference, especially in cases in which the employee is not represented by an attorney or other representative.

(b) A benefit review officer may reschedule a benefit review conference if the benefit review officer determines that any available information pertinent to the resolution of disputed issues is not produced at the benefit review conference.

(c) The benefit review officer may not take testimony but may direct questions to an employee, an employer, or a representative of an insurance carrier to supplement or clarify information in a claim file.

(d) The benefit review officer may not make a formal record.

SECTION 6.14. PROCEDURES. (a) The commission shall promulgate rules for conducting benefit review conferences.

(b) A benefit review conference is not subject to common law or statutory rules of evidence or procedure.

SECTION 6.15. RESOLUTION AT A BENEFIT REVIEW CONFERENCE. (a) A dispute may be resolved either in whole or in part at the benefit review conference. If the conference results in the resolution of some of the disputed issues by mutual agreement or in a settlement, the benefit review officer shall reduce the agreement or the settlement to writing. The benefit review officer and each party or the designated representative of the party shall sign the agreement or settlement. A settlement is not effective unless it is approved by the director of the division of hearings in accordance with Section 4.33 of this Act and takes effect on the date it is approved by that director.

(b) An agreement signed pursuant to this section shall be binding on the insurance carrier through the final conclusion of all matters relating to the claim, unless the commission or a court, on a finding of fraud, newly discovered evidence, or other good and sufficient cause, shall relieve the insurance carrier of the effect of such agreement.

(c) An agreement signed pursuant to this section shall be binding on the claimant, if represented by an attorney, to the same extent as on the insurance carrier. If the claimant is not represented by an attorney, such agreement shall remain binding on the claimant through the final conclusion of all matters relating to the claim while the claim is pending before the commission, unless the commission for good cause shall relieve the claimant of the effect of such agreement.

(d) If the dispute is not entirely resolved at the benefit review conference, the benefit review officer shall prepare a written report that details each issue that is not settled at the conference. The report must also include:

(1) a statement of each resolved issue;

(2) a statement of each issue raised but not resolved;

(3) a statement of the position of the parties regarding each unresolved issue;

(4) the officer's recommendation regarding each unresolved issue;

(5) the officer's recommendations regarding the payment or denial of benefits;

(6) a statement of what, if any, interlocutory orders were entered pursuant to Subsections (e) and (f) of this section; and

(7) a statement of the procedures required to request a contested case hearing or arbitration and a complete explanation of the differences in those proceedings and the rights of the parties to subsequent review of the determinations made in those proceedings.

(e) If a benefit review officer recommends that benefits be paid or not paid, the benefit review officer may issue an interlocutory order to pay or not pay the benefits. The subsequent injury fund shall reimburse an insurance carrier for any overpayments of benefits made pursuant to an order entered under this subsection if that order is reversed or modified at a contested case hearing or at arbitration. The commission shall adopt rules to provide for a periodic reimbursement schedule, providing for reimbursement under this subsection at least annually.

(f) If there is a dispute as to which of two or more insurance carriers is liable for compensation for one or more compensable injuries, the benefit review officer may issue an interlocutory order directing each insurance carrier to pay a proportionate share of benefits due pending a final decision on liability. The proportionate share shall be determined by dividing the compensation due by the number of insurance carriers involved.

(g) On final determination of liability, any insurance carrier determined not to be liable for the payment of benefits is entitled to reimbursement for the share paid by the insurance carrier from any insurance carrier determined to be liable.

(h) The benefit review officer shall file the signed agreement and the report with the director of the division of hearings. The commission shall by rule prescribe the times within which the agreement and report shall be filed, and the division director shall furnish a copy of the file-stamped report to the claimant, the employer, and the insurance carrier.

[Sections 6.16-6.20 reserved for expansion]

CHAPTER C. ARBITRATION

SECTION 6.21. ELECTION OF ARBITRATION. (a) If issues remain unresolved after the benefit review conference, the parties, by mutual agreement, may elect to engage in arbitration in the manner provided by this chapter. Arbitration may be used only to resolve disputed benefit issues and is an alternative to a contested case hearing. A contested case hearing scheduled under Section 6.12(b) of this Act is cancelled by an election under this chapter.

(b) To elect arbitration, the parties must file the election with the commission not later than the 20th day after the last day of the benefit review conference. The commission shall prescribe a form for that purpose.

(c) Any election to engage in arbitration under this chapter is binding and irrevocable on all parties for the resolution of all disputes arising out of the claims that are under the jurisdiction of the commission.

SECTION 6.22. PURPOSES OF ARBITRATION. The purposes of arbitration are:

(1) to enter into formal, binding stipulations on issues on which the parties agree;

(2) to resolve issues on which the parties disagree; and

(3) to render a final award with respect to all issues in dispute.

SECTION 6.23. ARBITRATORS. (a) The commission shall establish regional lists of arbitrators who meet the qualifications prescribed under Section 6.02(d) of this Act. Each regional list shall be initially prepared in a random name order, and subsequent additions to each list shall be added in consecutive chronological order. The commission shall assign the arbitrator for a particular case by selection of the next name after the previous case's selection in consecutive order. The commission may not change the order of names once the order is established under this subsection, except that once all arbitrators on the list have been assigned to a case, the names shall be randomly reordered. The commission shall assign an arbitrator to a pending case not later than 30 days after the date on which the election for arbitration is filed with the commission.

(b) When an arbitrator has been assigned to a case under Subsection (a) of this section, the parties shall be notified immediately. A party is entitled, in its sole discretion, to reject the arbitrator. If a party rejects the arbitrator, the commission shall assign another arbitrator as provided by Subsection (a) of this section. Each party is entitled to one rejection for each case, and when all parties have exercised their right of rejection or if no rejection is registered, the assignment is final. Any rejection must be made not later than the third day after the date of notification of the arbitrator's assignment.

(c) If an assigned arbitrator is unable to schedule arbitration to be held on or before the 30th day after the date of the arbitrator's assignment, the commission shall appoint the next arbitrator on the applicable list. Each party is entitled to reject the arbitrator in the manner provided under Subsection (b) of this section.

(d) The commission's lists are strictly confidential and are not subject to disclosure under the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes). The lists may not be revealed by any commission employee to any person who is not a commission employee. The lists are exempt from discovery in civil litigation unless the party seeking the discovery establishes reasonable cause to believe that a

violation of the requirements of this section occurred and that the violation is relevant to the issues in dispute.

SECTION 6.24. ARBITRATION PROCEDURE. (a) The arbitrator shall schedule arbitration to be held not later than the 30th day after the date of the arbitrator's assignment and shall notify the parties and the commission of the scheduled date.

(b) A request by a party for a continuance of the arbitration to another date must be directed to the director of the division of hearings. The director may grant a continuance only if the director determines, giving due regard to the availability of the arbitrator, that there is good cause for the continuance. If the director grants a continuance under this subsection, the date of the rescheduled arbitration may not be later than the 30th day after the date of the original arbitration. Notwithstanding the existence of good cause, the director may not grant more than one continuance to each party.

(c) The commission shall adopt rules for arbitration consistent with generally recognized arbitration principles and procedures.

(d) Each party shall attend the arbitration prepared to set forth in detail its position on unresolved issues and the issues with respect to which it is prepared to stipulate. A party who does not attend the conference commits a Class D administrative violation unless the arbitrator determines that the party had good cause not to attend.

(e) Not later than the seventh day before arbitration, the parties shall exchange and file with the arbitrator all medical reports and other documentary evidence pertinent to the resolution of the claim, not previously exchanged or filed, together with information as to their proposed resolution of the disputed issues. A party who fails to comply with the requirements of this subsection without good cause, as determined by the arbitrator, commits a Class D administrative violation.

(f) An arbitrator shall protect the interests of all parties, ensure that all relevant evidence has been disclosed to the arbitrator and to all parties, and render an award consistent with the terms of this Act and the policies of the commission.

(g) The arbitrator may require witnesses to testify under oath and shall require testimony under oath if requested by a party. The commission shall make an electronic recording of the proceeding. An official stenographic record need not be made, but any party wishing to record the proceeding by stenographic means may do so and is responsible for the expenses of making the record.

(h) The parties may offer evidence as they desire and shall produce additional evidence as the arbitrator considers necessary to an understanding and determination of the dispute. The arbitrator is the judge of the relevance and materiality of the evidence offered, and conformity to legal rules of evidence is not required. The parties may present closing statements as they desire, but the record may not remain open for written briefs unless requested by the arbitrator.

(i) Except in regard to procedural matters, a party and an arbitrator may not communicate outside the arbitration unless the communication is in writing with copies provided to all parties.

SECTION 6.25. AGREEMENT TO LIMIT SCOPE. An agreement to elect arbitration binds the parties to the provisions of Article 4 of this Act relating to benefits, and any award, agreement, or settlement after arbitration is elected shall comply with the provisions of that article.

SECTION 6.26. AWARD AT ARBITRATION. (a) Not later than the seventh day after the last day of arbitration, the arbitrator shall enter the final award. The arbitrator shall base the award on the facts established at arbitration, including stipulations of the parties, and on the law as properly applied to those facts.

(b) The award must:

(1) be in writing;

(2) be signed and dated by the arbitrator; and

(3) include a statement of the arbitrator's decision on the contested issues and the parties' stipulations on uncontested issues.

(c) The arbitrator shall file a copy of the award as part of the permanent claim file at the commission and shall notify the parties in writing of the decision.

(d) An award entered under this section is final and binding on all parties. Except as provided by Section 6.28 of this Act, there is no right to appeal.

(e) The arbitrator's award is a final order of the commission.

SECTION 6.27. CLERICAL ERROR. For the purpose of correcting a clerical error, an arbitrator retains jurisdiction of the award for 20 days after the date of the award.

SECTION 6.28. VACATING AN AWARD. (a) On application of an aggrieved party, a court of competent jurisdiction shall vacate an arbitrator's award on a finding that:

(1) the award was procured by corruption, fraud, or misrepresentation;

(2) the decision of the arbitrator was arbitrary and capricious; or

(3) the arbitration award was outside the jurisdiction of the commission.

(b) If an award is vacated, the case shall be remanded to the commission for another arbitration proceeding.

(c) A suit to vacate an award must be filed not later than the 30th day after the date of the award or not later than the 30th day after the date the appealing party knew or should have known of a basis for suit under this section, but in no event later than 12 months after an order denying compensation or after the expiration of the income or death benefit period. Venue for such a suit is in the county in which the arbitration was conducted.

(d) In a suit to vacate an award made by the arbitrator, any determination, including findings of fact or conclusions of law, shall be made exclusively by the court.

[Sections 6.29-6.30 reserved for expansion]

CHAPTER D. CONTESTED CASE HEARING

SECTION 6.31. CONTESTED CASE HEARING. (a) If arbitration is not elected pursuant to Section 6.21 of this Act, a party to a claim for which a benefit review conference is held or a party eligible to proceed directly to a contested case hearing as provided by Section 6.12(c) of this Act is entitled to a contested case hearing. The issues resolved at the benefit review conference and issues not raised at the benefit review conference may not be considered except by consent of the parties or unless the commission determines that good cause existed for not raising the issue at the earlier proceedings.

(b) The commission shall schedule a contested case hearing in accordance with Section 6.12(b) or (c) of this Act.

(c) A written request by a party for a continuance of the contested case hearing to another date must be directed to the commission. The commission may grant a continuance only if the commission determines that there is good cause for the continuance.

(d) The commission shall adopt rules governing procedures under which contested case hearings are conducted.

SECTION 6.32. APPLICATION OF THE ADMINISTRATIVE PROCEDURE AND TEXAS REGISTER ACT. The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) applies to the contested case hearing to the extent that the commission finds appropriate, except that Sections 15 through 23 of that Act do not apply.

SECTION 6.33. DISCOVERY IN CONTESTED CASE HEARINGS. (a) Except as provided in Subsection (f) of this section, discovery shall be limited to:

(1) depositions on written questions to any health care provider;

(2) depositions of other witnesses as permitted by the hearing officer for good cause shown; and

(3) interrogatories as prescribed by the commission.

(b) The commission shall by rule prescribe standard form sets of interrogatories to elicit information from claimants and insurance carriers. These interrogatories shall be answered by each party and served on the opposing party within a time to be prescribed by commission rule, unless the parties agree otherwise.

(c) Such discovery shall not seek information which may readily be derived from the documentary evidence described in Subsection (d) of this section, and the answers need not duplicate such information.

(d) Within a time to be prescribed by commission rule, the parties shall exchange:

(1) all medical reports and reports of expert witnesses who will be called to testify at the hearing;

(2) all medical records;

(3) any witness statements;

(4) the identity and location of any witness known to the parties to have knowledge of relevant facts; and

(5) all photographs or other documents which a party intends to offer into evidence at the hearing.

(e) A party who fails to disclose information known to that party or documents which are in existence and in the possession, custody, or control of that party at the time when disclosure is required by this section may not introduce such evidence at any subsequent proceeding before the commission or in court on the claim unless good cause is shown for not having disclosed such information or documents under this section.

(f) For good cause shown, a party may obtain permission from the hearing officer to conduct additional discovery as necessary.

SECTION 6.34. CONTESTED CASE HEARING PROCEDURES. (a) At the contested case hearing the hearing officer shall:

(1) swear witnesses;

(2) receive testimony;

(3) allow examination and cross-examination of witnesses;

(4) accept documents and other tangible evidence; and

(5) allow the presentation of evidence by affidavit.

(b) The hearing officer shall ensure the preservation of the rights of the parties and the full development of facts required for the determinations to be made. The hearing officer may permit the use of summary procedures, if appropriate, including witness statements, summaries, and similar measures to expedite the proceedings.

(c) The proceedings of the contested case hearing shall be electronically recorded. A party may request a transcript of the proceeding and shall pay the reasonable cost of the transcription.

(d) A party may request that the proceedings of the contested case hearing be recorded by a court reporter. The party making the request shall bear the cost.

(e) The hearing officer is the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given to the evidence, and conformity to legal rules of evidence is not necessary; however, any written stipulations and agreements filed in the record or oral stipulations and agreements preserved in the record made between the parties shall be final and binding. The hearing officer may accept written statements signed by a witness and shall accept all written reports signed by a health care provider.

(f) All parties are required to attend the contested case hearing. A party who does not attend a contested case hearing without good cause as determined by the hearing officer commits a Class C administrative violation.

(g) The hearing officer shall issue a written decision that includes: (1) findings of fact and conclusions of law; (2) a determination of whether benefits are due; and (3) an award of benefits due. On a form to be prescribed and promulgated by the commission, the hearing officer shall issue a separate written decision with respect to attorney's fees and any matter relating to such fees, and no part of this decision with respect to attorney's fees or the form shall be made known to a jury in any judicial review of an award, including an appeal. The commission shall by rule prescribe the times within which the hearing officer shall file the decisions with the division. The division shall send a copy of the decision to each party.

(h) The decision of the hearing officer regarding benefits is final in the absence of a timely appeal by a party and is binding during the pendency of an appeal to the appeals panel.

(i) Except in regard to procedural matters, a party and a hearing officer may not communicate outside the contested case hearing unless the communication is in writing with copies provided to all parties.

[Sections 6.35-6.40 reserved for expansion]

CHAPTER E. APPEALS PANEL

SECTION 6.41. APPEALS PANEL. (a) A party that desires to appeal the decision of the hearing officer shall file a written appeal with the appeals panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division of hearings and shall on the same date serve a copy of the request for review on the other party. The respondent party shall file a written response with the appeals panel not later than the 15th day after the date on which the request for appeal is served and shall on the same date serve a copy of the response on the appellant party.

(b) A request for appeal or a response must clearly and concisely rebut or support the decision of the hearing officer on each issue on which review is sought.

SECTION 6.42. APPEALS PANEL PROCEDURES. (a) The commission appeals panel shall consider:

(1) the record developed at the contested case hearing; and

(2) the written request for review and response filed with the appeals panel.

(b) The appeals panel may:

(1) affirm the decision of the hearing officer;

(2) reverse that decision and render a new decision; or

(3) reverse that decision and remand no more than one time to the hearing officer for further consideration and development of evidence. The hearing on remand shall be accelerated and the commission shall adopt rules to give priority to the hearing over other proceedings.

(c) The appeals panel shall issue its decision which shall determine each issue on which review was requested. The decision shall be in writing and issued not later than the 30th day after the date on which the written response to the request for appeal is filed, and the appeals panel shall file a copy of the decision with the division director. A copy of the decision of the appeals panel shall be sent to each party not later than the seventh day after the decision is filed with the commission. If the appeals panel does not issue its decision in accordance with this subsection, the decision of the hearing officer shall become final and shall constitute the final decision of the appeals panel.

(d) The decision of the appeals panel regarding benefits is final in the absence of a timely appeal by a party for judicial review.

(e) The decision of the appeals panel regarding benefits is binding during the pendency of an appeal under Chapter F of this article. If the court of last resort in

the case finally modifies or reverses an appeals panel decision awarding benefits, the insurance carrier who has paid benefits as required by this subsection may recover reimbursement of any benefit overpayments from the subsequent injury fund.

SECTION 6.43. CONTINUATION OF COMMISSION JURISDICTION. During judicial review of an appeals panel decision on any disputed issue relating to a workers' compensation claim, the commission retains jurisdiction of all other issues related to the claim.

SECTION 6.44. REVISION BASED ON CLERICAL ERROR. The executive director is authorized to revise a decision in a contested case hearing on a finding of clerical error.

SECTION 6.45. JUDICIAL ENFORCEMENT OF COMMISSION ORDERS. (a) If an insurance carrier refuses or fails to comply with a final order or decision of the commission, the claimant may bring suit in the county of the claimant's residence or the county in which the injury occurred, in any court of competent jurisdiction to enforce the award as a final and binding order of the commission.

(b) In addition to a judgment enforcing the order, the claimant is entitled to 12 percent penalties on the amount of benefits recovered in the judgment and interest, with reasonable attorney's fees for the prosecution and collection of the claim.

(c) A person who fails or refuses to comply with a commission order or decision within 20 days of the order or decision becoming final commits a Class A administrative violation.

[Sections 6.46-6.60 reserved for expansion]

CHAPTER F. JUDICIAL REVIEW OF COMMISSION DECISIONS

SECTION 6.61. JUDICIAL REVIEW; PROCEDURES. (a) A party that has exhausted its administrative remedies under this Act and is aggrieved by a final decision of the appeals panel may seek judicial review under this chapter by filing suit not later than the 40th day after the date on which the decision of the appeals panel was filed with the division of hearings.

(b) The party must bring suit to appeal the decision by filing a petition with the appropriate court in:

(1) the county where the employee resided at the time of the injury; or

(2) the county where the employee resided at the time of death if the employee is deceased.

(c) In the case of an occupational disease, the petition shall be filed with the appropriate court in:

(1) the county where the employee resided on the date disability began; or

(2) any county agreed to by the parties.

(d) A copy of the petition shall be simultaneously filed with the court and the commission and served on the opposing party or parties.

(e) On timely motion initiated by the executive director, the commission shall be permitted to intervene in any judicial proceeding under this chapter.

SECTION 6.62. TRIAL OF ISSUES REGARDING COMPENSABILITY OR INCOME OR DEATH BENEFITS ON A WORKERS' COMPENSATION CLAIM. (a) Judicial review of a final decision of a commission appeals panel regarding compensability or eligibility for or the amount of income or death benefits shall be conducted as provided by this section.

(b) A trial under this section shall be limited to issues decided by the commission appeals panel and on which judicial review is sought. The pleadings must specifically set forth the determinations of the appeals panel by which the party is aggrieved.

(c) All appeals from an issue described in Subsection (a) of this section shall be governed by the following:

(1) a party appealing the decision on an issue shall have the burden of proof by a preponderance of the evidence;

(2) prior to the submission of the case to the jury, the court in a jury trial shall inform the jury in the court's instructions, charge, or questions to the jury of the commission appeals panel decision on each disputed issue submitted to the jury;

(3) in a trial to the court without jury, the court in rendering its judgment shall consider the decision of the commission appeals panel;

(4) to the extent that this section conflicts with the Texas Rules of Civil Procedure or any other rules promulgated or adopted by the Supreme Court of Texas, this section controls;

(5) notwithstanding Section 22.004, Government Code, or any other law, the Supreme Court of Texas may not adopt or promulgate rules in conflict with or inconsistent with this section.

(d) Evidence shall be adduced as in other civil trials. The commission on payment of a reasonable fee shall make available to the parties a certified copy of the commission's record, and all facts and evidence it contains are admissible to the extent allowed under the Texas Rules of Civil Evidence. Except as provided in Subsections (e) through (j) of this section, evidence of extent of impairment shall be limited to that presented to the commission, and the court or jury, in its determination of the extent of impairment, must adopt one of the impairment ratings made under Section 4.26 of this Act.

(e) Evidence of the extent of impairment shall not be limited to that presented to the commission if the court, after a hearing, finds that there is a substantial change of condition. The court's finding of a substantial change of condition must be based only on:

(1) medical evidence from the same doctor or doctors whose testimony or opinion was presented to the commission;

(2) evidence that has come to the party's knowledge since the contested case hearing;

(3) evidence that could not have been discovered earlier with due diligence by the party; and

(4) evidence that would probably produce a different result if it is admitted into evidence at the trial.

(f) If substantial change of condition is disputed, the court shall require the designated doctor in the case to verify the substantial change of condition, if any. The findings of the designated doctor shall be presumed to be correct, and the court shall base its finding on the medical evidence presented by the designated doctor in regard to substantial change of condition unless the preponderance of the other medical evidence is to the contrary.

(g) The substantial change of condition must be verifiable or confirmable by recognized laboratory or diagnostic tests or signs confirmable by physical examination.

(h) If the court finds a substantial change of condition under this section, new medical evidence of the extent of impairment must be from and is limited to the same doctor or doctors who made impairment ratings before the commission pursuant to Section 4.26 of this Act.

(i) The court's finding of a substantial change of condition may not be made known to the jury.

(j) The court or jury in its determination of the extent of impairment must adopt one of the impairment ratings made pursuant to this section.

(k) The commission or the State Board of Insurance shall furnish any interested party in the claim with a certified copy of the notice of the employer securing

compensation with the insurance carrier, filed with the commission. The certified copy of the notice shall be admissible in evidence on trial of the claim pending and shall be prima facie proof of the facts stated in the notice unless the facts are denied under oath by the opposing party.

(l) All determinations of compensation benefits before the court shall be in accordance with the provisions of this Act.

SECTION 6.63. COURT APPROVAL OF SETTLEMENTS REQUIRED. (a) After judicial review of an award is sought and until the entry of judgment by the trial court, any settlement made by the parties must be approved by the trial court. The court may not approve any settlement except on a finding that:

(1) the settlement accurately reflects the terms of the agreement between the parties;

(2) the settlement adheres to all appropriate provisions of the law; and

(3) under the law and facts, the settlement is in the best interest of the claimant.

(b) A settlement may not provide for payment of any benefits in a lump sum except as provided in Section 4.27 of this Act.

(c) The employee's right to medical benefits as provided in Section 4.61 of this Act may not be limited or terminated under this section.

(d) A settlement or agreement resolving an issue of impairment may not be made before the employee reaches maximum medical improvement and must adopt one of the impairment ratings made according to Section 4.26 of this Act.

(e) Any party proposing a settlement before judgment is entered by the trial court may petition the trial court orally or in writing for approval of the settlement.

SECTION 6.64. JUDICIAL REVIEW OF ISSUES OTHER THAN COMPENSABILITY OR INCOME OR DEATH BENEFITS. (a) For all issues other than those covered under Section 6.62(a) of this Act, judicial review shall be conducted in the manner provided for judicial review of a contested case under Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(b) Judicial review conducted under this section is governed by the substantial evidence rule.

ARTICLE 7. WORKERS' HEALTH AND SAFETY
CHAPTER A. SAFETY

SECTION 7.01. APPLICABILITY. (a) In this article, "employer" means a person who makes a contract or contracts of hire.

(b) An employer who obtains workers' compensation insurance coverage is subject to this article.

(c) An employer who employs more than four employees and who is not required to and does not obtain workers' compensation insurance coverage is subject to this article as prescribed in Subsection (d) of this section.

(d) An employer described in Subsection (c) of this section is subject to this article as follows:

(1) an employer employing 150 or more employees not exempt from workers' compensation insurance coverage is subject to this article beginning January 1, 1992;

(2) an employer employing 50 or more employees not exempt from workers' compensation insurance coverage is subject to this article beginning January 1, 1993; and

(3) an employer employing more than four employees not exempt from workers' compensation insurance coverage is subject to this article beginning January 1, 1994.

SECTION 7.02. DIVISION OF WORKERS' HEALTH AND SAFETY. (a) The division of workers' health and safety of the commission shall coordinate and

enforce the implementation of state laws and rules relating to workers' health and safety issues.

(b) The division shall collect and serve as a repository for statistical information on workers' health and safety. The division shall analyze and use the information to identify and assign priorities to safety needs and to better coordinate the safety services provided by public or private organizations, including insurance carriers. The division shall promote workers' health and safety through educational programs and other innovative programs developed by the division.

(c) The division shall coordinate or supervise the collection of information relating to job safety by state or federal entities, including information collected for the supplementary data system and the annual survey of the Bureau of Labor Statistics of the United States Department of Labor.

(d) With the approval of the commission, the division may enter contracts with the federal government to perform occupational safety projects and may apply for funds from the federal government through any federal program relating to occupational safety.

(e) The division shall publish or procure and issue educational books, pamphlets, brochures, films, videotapes, and other informational and educational material. Specific educational material shall be directed to high-risk industries and employments and shall specifically address means and methods of avoiding high frequency, but preventable, workers' injuries. Other educational material shall be directed to business and industry generally and shall specifically address means and methods of avoiding common workers' injuries. Specific decisions as to what issues and problems should be addressed by such information shall be made by the division after assigning appropriate priorities based on frequency of injuries, degree of hazard, severity of injuries, and similar considerations. Such educational materials shall include specific references to the requirements of state and federal laws and regulations, to recommendations and practices of business, industry, and trade associations, and, where needed, to recommended work practices based on recommendations made by the division for the prevention of injury.

(f) The division shall cooperate with business and industry trade associations, labor organizations, and other entities to develop means and methods of educating employees and employers with regard to workplace safety.

(g) The division shall cooperate with other entities in the development and approval of safety courses, safety plans, and safety programs.

(h) The division shall certify safe employers to provide peer review safety programs.

(i) The division shall advise insurance carrier loss control service organizations of hazard classifications, specific employers, industries, occupations, or geographic regions to which loss control services should be directed or of the identity and types of injuries or occupational diseases and means and methods for prevention of the same to which loss control services should be directed and shall advise insurance carrier loss control service organizations of safety needs and priorities developed by the division.

(j) In accordance with Section 7(c), Occupational Safety and Health Act of 1970 (29 U.S.C. Section 656), the division shall:

(1) consult with employers regarding compliance with the federal occupational safety laws and rules; and

(2) collect information relating to occupational safety as required by federal laws, rules, or agreements.

SECTION 7.03. JOB SAFETY INFORMATION SYSTEM. (a) The division shall establish and maintain a job safety information system. The division is authorized, empowered, and directed to obtain from any state agency, including the State Board of Insurance, the Texas Department of Health, and the Texas

Employment Commission, data and statistics, including those compiled for the purpose of rate making. The division shall consult with the State Board of Insurance and the Texas Employment Commission in the design of data information and retrieval systems that will accomplish the mutual purposes of those agencies and of the division.

(b) Employers shall file with the commission a report on each on-the-job injury which results in the employee's absence from work for more than one day and on each occupational disease of which the employer has knowledge. The commission shall promulgate rules and prescribe the form and manner of such reports.

(c) The job safety information system shall include a comprehensive data base that incorporates all pertinent information relating to each reported injury, including:

(1) age, sex, wage level, occupation, and insurance company payroll classification code of the injured employee;

(2) the nature, source, and severity of the injury;

(3) the reported cause of the injury;

(4) the part of the body affected;

(5) any equipment involved in the injury;

(6) the number of prior workers' compensation claims by the employee;

(7) the prior loss history of the employer;

(8) the standard industrial classification code of the employer;

(9) the classification code of the employer; and

(10) any other information deemed useful for the purpose of statistical analysis.

(d) The identity of the employee is confidential and may not be disclosed as part of the job safety information system.

SECTION 7.04. EXTRA-HAZARDOUS EMPLOYER PROGRAM. (a) The division shall develop a program including injury frequency to identify "extra-hazardous employers." The term "extra-hazardous employer" means an employer's injury frequencies substantially exceed those that may reasonably be expected in that employer's business or industry. The division shall notify each identified extra-hazardous employer and the insurance carrier for the employer that the employer has been identified as an extra-hazardous employer.

(b) An employer that receives notification under Subsection (a) of this section must obtain a safety consultation within 30 days from the division, the employer's insurance carrier, or another professional source approved by the division for that purpose. The safety consultant shall file a written report with the commission and the employer setting out any hazardous conditions or practices identified by the safety consultation.

(c) The employer and the consultant shall formulate a specific accident prevention plan which addresses the hazards identified by the consultant. The employer shall comply with the accident prevention plan.

(d) The division may investigate accidents occurring at the worksites of an employer for whom a plan has been formulated under Subsection (c) of this section, and the division may otherwise monitor the implementation of the accident prevention plan as it finds necessary.

(e) Six months after the formulation of an accident prevention plan prescribed by Subsection (c) of this section, the division shall conduct a follow-up inspection of the employer's premises. The commission may require the participation of the safety consultant who performed the initial consultation and formulated the safety plan. If the division determines that the employer has complied with the terms of the accident prevention plan or has implemented other acceptable corrective measures, the division shall so certify. An employer who fails or refuses to

implement the accident prevention plan or other suitable hazard abatement measures commits a Class B administrative violation, and each day of noncompliance constitutes a separate violation.

(f) If, at the time of the inspection required under Subsection (e) of this section, the employer continues to exceed the injury frequencies that may reasonably be expected in that employer's business or industry, the division shall continue to monitor the safety conditions at the worksite and may formulate additional safety plans reasonably calculated to abate hazards. The employer shall comply with such plans and is subject to additional penalties for failure to implement the plan or plans.

(g) The commission shall bill the employer for the reasonable cost of services provided under Subsections (c) through (f) of this section. The costs of services shall be at a cost-reimbursement level including a reasonable allocation of the commission's administrative costs.

(h) An employer may request a hearing to contest findings made by the commission under this section. The hearing shall be conducted in the manner provided for a contested case under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and is subject to judicial review as provided in that Act.

(i) The identification as an extra-hazardous employer under this section is not admissible in any judicial proceeding unless the commission has determined that the employer is not in compliance with this section and that determination has not been reversed or superseded at the time of the event giving rise to the judicial proceeding.

SECTION 7.05. ACCIDENT PREVENTION SERVICES. (a) Any insurance company desiring to write workers' compensation insurance in Texas shall maintain or provide accident prevention facilities as a prerequisite for a license to write such insurance. Such facilities shall be adequate to furnish accident prevention services required by the nature of its policyholders' operations and shall include surveys, recommendations, training programs, consultations, analyses of accident causes, industrial hygiene, and industrial health services to implement the program of accident prevention services. Each field safety representative shall be either a college graduate who shall have a bachelor's degree in science or engineering, a registered professional engineer, a certified safety professional, a certified industrial hygienist, an individual with 10 years' experience in occupational safety and health, or an individual who shall have completed a certified training program in accident prevention services approved by the division. The insurance company may employ qualified personnel, retain qualified independent contractors, contract with the policyholder to provide qualified accident prevention personnel and services, or use a combination of the methods enumerated in this subsection. Such personnel shall have the qualification required for field safety representatives.

(b) The division shall conduct inspections to determine the adequacy of the accident prevention services required by Subsection (a) of this section at least every two years for each insurance company writing workers' compensation insurance in Texas.

(c) Notice that services are available to the policyholder from the insurance company must appear in no less than 10-point bold type on the front of each workers' compensation insurance policy delivered or issued for delivery in the state.

(d) At least once each year each insurance company writing workers' compensation insurance in Texas must submit to the division detailed information on the type of accident prevention facilities offered to that insurance company's policyholders. The information must include:

(1) the amount of money spent by the insurance company on accident prevention services;

(2) the number and qualifications of field safety representatives employed by the insurance company;

(3) the number of site inspections performed;

(4) any accident prevention services for which the insurance company contracts;

(5) a breakdown of the premium size of the risks to which services were provided;

(6) evidence of the effectiveness of and accomplishments in accident prevention; and

(7) any additional information required by the commission.

(e) If the insurance company does not maintain or provide the accident prevention services required by this section or if the insurance company does not use the services in a reasonable manner to prevent injury to employees of its policyholders, the insurance company commits a Class B administrative violation, and each day of noncompliance is a separate violation.

(f) The commission shall employ the personnel necessary to enforce this section and shall employ at least 10 safety inspectors to perform inspections at the job site and at the insurance company to determine the adequacy of the accident prevention services provided by the insurance company. The safety inspectors must have the qualification required for field safety representatives by Subsection (a) of this section.

SECTION 7.06. IMMUNITY FROM CERTAIN LIABILITY. The insurance company, the agent, servant, or employee of the insurance company, or a safety consultant who performs a safety consultation under Sections 7.04 and 7.05 of this Act shall have no liability with respect to any accident based on the allegation that such accident was caused or could have been prevented by a program, inspection, or other activity or service undertaken by the insurance company for the prevention of accidents in connection with operations of the employer; provided, however, this immunity shall not affect the liability of the insurance carrier for compensation or as otherwise provided in this Act.

SECTION 7.07. BACK INJURY PREVENTION TRAINING PROGRAM. (a) The division shall prepare and administer a back injury prevention training program designed to instruct workers in methods of performing job-related movements and tasks that minimize strain and safeguard against injury or reinjury to the back.

(b) The division shall:

(1) set minimum standards by published rules and regulations for instruction, qualifications for instructors, program content, and supplementary materials and equipment;

(2) contract with other state agencies, political and legal subdivisions of the state, or other suitable public and private agencies to provide approved back injury prevention training programs;

(3) compile information to evaluate the program; and

(4) establish a maximum cost for the training not to exceed $35 per participant to be paid by the insurance carrier.

(c) An employee who receives income benefits for four or more weeks for a back injury shall participate in this program. If the employee refuses to participate, without good cause, the division director may order the insurance carrier to suspend income benefits for the period of noncompliance.

(d) The program created under this section will be a pilot program to be administered in one metropolitan area and in one rural area to be determined by the commission for a period of two years.

SECTION 7.08. EMPLOYEE REPORTS OF SAFETY VIOLATIONS. (a) The division shall establish and maintain on a 24-hour-a-day basis a toll-free

telephone number which a person may use to report a violation of an occupational health or safety law. Each employer shall notify its employees of this service in a manner prescribed by the commission.

(b) An employer may not suspend or terminate the employment of or otherwise discriminate against an employee for reporting an alleged violation of an occupational health or safety law as prescribed in Subsection (a) of this section if the employee report is made in good faith.

(c) An employee whose employment is terminated or suspended is entitled to reinstatement in the employee's former position, compensation for wages lost during the period of the suspension or termination, and reinstatement of any fringe benefits or seniority rights lost because of the suspension or termination. An employee seeking relief under this subsection must file suit not later than the 90th day after the alleged conduct of the employer occurred or was discovered or discoverable by the employee through the use of reasonable diligence. An employee who prevails in a suit under this section may obtain costs of court and reasonable attorney's fees.

SECTION 7.09. EXCLUSIVE REMEDY. Except as specifically provided in Section 7.08 of this Act, this article does not create an independent cause of action at law or in equity. This article provides the sole remedy for violation of this article.

SECTION 7.10. POLICIES FOR ELIMINATION OF DRUGS IN THE WORKPLACE. (a) Each employer who has 15 or more employees and who maintains workers' compensation insurance coverage shall adopt a policy designed to eliminate drug abuse and its effects in the workplace. The employer shall distribute to each employee a written copy of the policy.

(b) The commission shall enforce this requirement and may adopt rules for that purpose.

[Sections 7.11-7.20 reserved for expansion]

CHAPTER B. DIVISION OF RISK MANAGEMENT

SECTION 7.21. RISK MANAGEMENT FOR CERTAIN STATE AGENCIES. (a) In this section, "state agency" means a board, commission, department, office, or other agency in the executive, judicial, or legislative branch of state government that was created by the constitution or a statute of this state and that has authority that is not limited to a specific geographical portion of the state. The term includes an institution of higher education as defined by Section 61.003, Education Code. The term does not include an entity with fewer than five employees.

(b) This chapter does not apply to those state agencies that had medical malpractice, workers' compensation, or other self-insurance coverage with associated risk management programs prior to January 1, 1989.

(c) The director of the division of risk management shall serve as the state risk manager. In that capacity, the director shall supervise the development and administration of systems to:

(1) identify the property and liability losses, including workers' compensation losses, of each state agency;

(2) identify the administrative costs of risk management incurred by each state agency;

(3) identify and evaluate the exposure of each state agency to claims for property and liability losses, including workers' compensation; and

(4) reduce the property and liability losses, including workers' compensation, incurred by each state agency.

(d)(1) Each state agency shall report to the director of the division of risk management, on a fiscal-year basis beginning with the fiscal year beginning September 1, 1990, the following risk management exposure and loss information, as well as any additional information that the director determines to be necessary:

(A) the location, timing, frequency, severity, and aggregate amounts of losses by category of risk, including open and closed claims and final judgments;

(B) loss information obtained by the Workers' Compensation Division of the attorney general's office in the course of its administration of the workers' compensation program for state agencies in the State of Texas;

(C) detailed information on existing and potential exposures to loss, including but not limited to property location and values, descriptions of agency operations, and estimates of maximum probable and maximum possible losses by category of risk;

(D) estimates of incurred-but-not-reported losses by category of risk; and

(E) information determined necessary by the director in order to prepare a Texas Workers' Compensation Unit Statistical Report.

(2) The information required by this subsection shall be due for each fiscal year on or before 60 days following the close of each fiscal year.

(e) Based on the recommendations of the director, the commission shall report to each legislature relating to methods to reduce the exposure of state agencies to the risks of property and liability losses, including workers' compensation losses, the operation, financing, and management of those risks, and the handling of claims brought against the state. The report must include:

(1) the frequency, severity, and aggregate amount of open and closed claims in the preceding biennium by category of risk, including final judgments;

(2) identification of those state agencies that have not complied with the reporting requirements of this section; and

(3) recommendations for the coordination and administration of a comprehensive risk management program to serve all state agencies, including recommendations for any necessary statutory changes.

(f) The division of risk management shall administer guidelines adopted by the commission for a comprehensive risk management program applicable to all state agencies to reduce property and liability losses, including workers' compensation losses.

(g) The division shall assist a state agency that has not implemented an effective risk management program in the implementation of a comprehensive program that meets the division guidelines.

(h) Effective September 1, 1991, each state agency shall enter into interagency contracts to pay the costs incurred by the commission in administering this section as it relates to that state agency through an interagency contract that meets the requirements of The Interagency Cooperation Act (Article 4413(32), Vernon's Texas Civil Statutes). Reimbursable costs include the cost of:

(1) services of commission employees;

(2) materials; and

(3) equipment, including computer hardware and software.

(i)(1) Interagency contracts under Subsection (h) of this section shall be based on:

(A) the number of agency employees compared with state employees as a whole;

(B) the dollar value of agency property and asset and liability exposure compared to the state as a whole; and

(C) the number and aggregate cost of claims and losses incurred compared to the state as a whole.

(2) For the purpose of this pro rata calculation of reimbursement costs, the comparison of the state as a whole shall exclude those agencies exempted under Subsection (b) of this section.

(j) The commission may adopt rules to implement this section, including rules relating to reporting requirements for state agencies.

ARTICLE 8. MEDICAL SERVICES

CHAPTER A. DIVISION OF MEDICAL REVIEW

SECTION 8.01. DIVISION OF MEDICAL REVIEW. (a) The commission shall establish by rule medical policies and fee guidelines governing the provision and payment of medical services that are designed to assure the quality of medical care and achieve effective medical cost control. Medical policies adopted by the commission must be consistent with Section 8.21 of this Act. The commission shall establish a division of medical review to ensure compliance with the rules and implement this article under the policies adopted by the commission.

(b) Insurance carriers are responsible for making appropriate payment of charges for medical services provided under this Act. To ensure compliance of providers and insurance carriers with the medical policies and fee guidelines adopted by the commission, the commission shall provide by rule for the review and audit of the payment by insurance carriers of charges for medical services provided under this Act. Rules adopted for this purpose shall require insurance carriers to bear the expense of the review and audit procedures. The division shall maintain a statewide data base of medical charges, actual payments, and treatment protocols that may be used by the commission in adopting the medical policies and fee guidelines and by the division in administering the medical policies, fee guidelines, or rules of the commission.

(c) The division shall ensure that:

(1) the data base contains information necessary to detect practices and patterns in medical charges, actual payments, and treatment protocols;

(2) the data base can be utilized in a meaningful way to allow the commission to control medical costs as provided by this Act; and

(3) the data base shall be available for public access for a reasonable fee to be established by the commission, except that the identities of injured workers and beneficiaries shall not be disclosed.

(d) The division shall monitor health care providers, insurance carriers, and workers' compensation claimants who receive medical services to assure the compliance of those persons with the medical policies and fee guidelines, as well as with other rules adopted by the commission relating to health care.

(e) The division shall order a refund of all charges paid to a health care provider in excess of those allowed by the medical policies or fee guidelines. The division shall also refer the health care provider alleged to have violated this Act to the division of compliance and practices.

(f) If the division determines that an insurance carrier has paid medical charges that are inconsistent with the medical policies or fee guidelines adopted by the commission, the division shall refer the insurance carrier alleged to have violated this Act to the division of compliance and practices. If the insurance carrier has reduced a charge of a health care provider when the charge was within the guidelines, the insurance carrier shall be directed to submit the difference to the provider, unless the reduction is in accordance with an agreement between the health care provider and the insurance carrier.

(g) The commission by rule shall provide for the periodic review of medical care provided in claims in which lost-time guidelines or other appropriate guidelines are exceeded. The division shall review the medical treatment provided in a claim that exceeds the guidelines and may take appropriate action to assure that necessary and reasonable care is provided.

(h) The division shall take appropriate action to be aware of and maintain the most current information on developments in the treatment and cure of injuries and diseases common in workers' compensation cases.

SECTION 8.02. AUTHORITY TO CONTRACT FOR FUNCTIONS. (a) The commission may contract with other private or public entities to perform any of the duties or functions of the division.

(b) The commission may contract with health care providers for independent medical examinations, medical case reviews, establishment of medical policies and fee guidelines, or other medical consultant services.

SECTION 8.03. COORDINATION WITH PROVIDERS. The division of medical review shall coordinate its activities with health care providers as necessary to perform its duties under this article. The coordination may include:

(1) conducting educational seminars on commission rules and procedures; or

(2) providing information to and requesting assistance from professional peer review organizations.

SECTION 8.04. INFORMATION FROM INSURANCE CARRIERS. (a) An insurance carrier shall provide to the division on request any information in its possession, custody, or control, relating to health care treatment, health care services, health care fees, and health care charges, as may reasonably relate to the commission's duties under this Act. A request from the commission shall specify the information needed.

(b) All information that is confidential by law shall be kept confidential by the commission.

(c) An insurance carrier who fails or refuses to comply with a request or who violates a rule promulgated to implement this section commits a Class C administrative violation. Each day of noncompliance is a separate violation.

SECTION 8.05. IMMUNITY FROM LIABILITY. A person who performs services for the commission as a designated doctor, independent medical examiner, a doctor performing a medical case review, or member of a peer review panel has the same immunity from liability as a commission member has under Section 2.01(e) of this Act. Immunity from liability under this section does not apply to a person providing medical treatment to an injured employee.

[Sections 8.06-8.20 reserved for expansion]

CHAPTER B. MEDICAL POLICIES AND FEE GUIDELINES

SECTION 8.21. REGULATION OF MEDICAL SERVICES. (a) The commission shall by rule establish guidelines relating to the use of medical services by employees who suffer compensable injuries, the fees charged or paid for those services, and the fees charged or paid for providing expert testimony relating to an issue arising under this Act.

(b) All guidelines for medical services fees under this Act must be fair and reasonable and may not provide for payment of fees in excess of the fees charged for similar treatment of an injured individual of an equivalent standard of living when the fees for the treatment are paid by the injured individual or by someone acting on the injured individual's behalf. In establishing the fee guidelines, the commission shall consider the increased security of payment afforded by this Act. The rules adopted by the commission shall include:

(1) guidelines relating to payment of fees for specific medical treatments or services;

(2) medical policies relating to necessary treatments for injuries;

(3) a program for prospective, concurrent, and retrospective review and resolution of disputes regarding health care treatments and services;

(4) a program for the systematic monitoring of the necessity of treatments administered and fees actually charged and paid for medical treatments or services, including the authorization of prospective, concurrent, or retrospective review as provided by the medical policies of the commission to ensure that the medical policies or guidelines are not exceeded;

(5) a program to detect practices and patterns by insurance carriers in unreasonably denying authorization of payment for medical services requested or performed if authorization is required by the medical policies of the commission;

(6) a program to increase the intensity of review for compliance with the medical policies or fee guidelines for any health care provider who has established practices and patterns in medical charges and treatments inconsistent with the medical policies and fee guidelines established by the commission;

(7) rules necessary to enable the commission to compel the production of documents, establish standards of reporting and billing governing both form and content, and charge an insurance carrier a reasonable fee for access to or evaluation of health care treatment, fees, or charges under this Act;

(8) rules necessary to enable the commission to charge a health care provider who exceeds a fee or utilization guideline instituted under this Act a reasonable fee for review of health care treatment, fees, or charges pursuant to this Act; and

(9) rules necessary to enable the commission to charge the insurance carrier who unreasonably disputes charges in accordance with a fee or guidelines instituted under this Act a reasonable fee for a review of health care treatment, fees, or charges under this Act.

SECTION 8.22. CONTRACTS WITH REVIEW ORGANIZATIONS. The commission may contract with a health care provider professional organization or other entity to develop, maintain, or review medical policies or fee guidelines or to review compliance with the medical policies or fee guidelines. For the purposes of review or resolution of a dispute as to compliance with the medical policies or fee guidelines, the commission may contract only with a health care provider professional review organization that includes in the review process health care practitioners who are licensed in the category under review and are of the same field or specialty as the category under review.

SECTION 8.23. MEDICAL ADVISORY COMMITTEE. (a) The medical advisory committee is created to advise the medical review division in developing and administering the medical policies, fee guidelines, and utilization guidelines established under Section 8.21 of this Act.

(b) The medical advisory committee is composed of 15 members appointed by the commission as provided by this section. Each member of the committee must be knowledgeable and qualified regarding work-related injuries and diseases. The advisory committee shall include each of the following:

(1) a representative of a public health care facility;
(2) a representative of a private health care facility;
(3) a doctor of medicine;
(4) a doctor of osteopathic medicine;
(5) a chiropractor;
(6) a dentist;
(7) a physical therapist;
(8) a pharmacist;
(9) a podiatrist;
(10) an occupational therapist;
(11) a medical equipment supplier; and
(12) a registered nurse.

(c) In addition, the commission shall appoint four additional members to the medical advisory committee, one to represent employers, one to represent employees, and two to represent the general public.

(d) The commission shall designate the chair of the medical advisory committee, which shall meet at the call of its chair or at the call of a majority of the committee.

(e) The commission may appoint other advisory committees as it deems necessary.

SECTION 8.24. MEDICAL POLICY AND GUIDELINE UPDATES REQUIRED. The medical policies and fee guidelines shall be reviewed and revised at least every two years to reflect fair and reasonable charges and amended to reflect current reasonable or necessary medical treatment or ranges of treatment. The medical advisory committee established under Section 8.23 of this Act shall advise the commission or professional organization in the review and revision.

SECTION 8.25. FEE AND TREATMENT GUIDELINES; PRESUMPTIONS. The following medical services are presumed reasonable:

(1) medical services consistent with the medical policies and fee guidelines adopted by the commission; and

(2) medical services that are provided subject to prospective, concurrent, or retrospective review as required by the medical policies of the commission and that are authorized by an insurance carrier.

SECTION 8.26. MEDICAL DISPUTE RESOLUTION. (a) A party, including a health care provider, is entitled to a review of medical services that are provided or for which authorization of payment is sought if the health care provider has:

(1) been denied payment or had the charge reduced for medical services rendered;

(2) been denied authorization for the payment of services requested or performed when authorization is required by the medical policies of the commission; or

(3) been ordered by the division to refund payments received for the provision of medical services.

(b) A health care provider who submits charges in excess of the commission fee guidelines or treatment policies is entitled to a review of medical services to determine if reasonable medical justification exists for the deviation.

(c) A review of medical services provided by a health care practitioner under this section shall be provided by a health care provider professional review organization if requested by the health care practitioner or if ordered by the commission.

(d) A party to a medical dispute that remains unresolved after a review of medical services as provided by this section is eligible to proceed to a hearing. The hearing shall be conducted in the manner provided for a contested case under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 8.27. INTEREST EARNED FOR DELAYED PAYMENT. (a) A fee or charge consistent with the guidelines for fees and charges earns interest at the rate provided in Section 1.04 of this Act from the 60th day after the date the health care provider submits the bill to an insurance carrier to the date the bill is paid.

(b) A refund from a health care provider earns interest at the rate provided in Section 1.04 of this Act from the 60th day after the date the provider receives notice of alleged overpayment from the insurance carrier.

SECTION 8.28. PREAUTHORIZATION AND DISPUTE RESOLUTION. (a) The commission by rule shall specify those health care treatments and services requiring express preauthorization, except for medical emergency, by the insurance carrier. The insurance carrier is not liable for those specified treatments and services if preauthorization is not sought by the claimant or health care provider and either obtained from the insurance carrier or ordered by the commission.

(b) If a dispute arises over the denial of preauthorization by the insurance carrier on request by the claimant or the health care provider, the commission shall proceed as set forth in Section 8.26 of this Act.

[Sections 8.29-8.40 reserved for expansion]

CHAPTER C. OTHER MEDICAL ISSUES

SECTION 8.41. PROVIDER'S DISCLOSURE. A health care provider that refers a workers' compensation claimant to another health care provider in which the referring provider has more than a five percent financial interest shall file an annual disclosure statement with the commission as provided by rules adopted by the commission and shall disclose the interest to the insurance carrier at the time of the referral. The referring provider shall specify the degree of the financial interest and shall provide other information as required by the rules of the commission.

SECTION 8.42. PRIVATE CLAIMS. (a) A health care provider may not pursue a private claim against a workers' compensation claimant for all or part of the costs of health care services provided to the claimant by the provider unless the injury is finally adjudicated not to be compensable under this Act or unless the employee violates Section 4.62 or 4.63 of this Act relating to selection of a doctor and the doctor had no knowledge of the violation by the employee at the time the services were rendered.

(b) A health care provider who violates Subsection (a) of this section commits a Class B administrative violation.

ARTICLE 9. COMPLIANCE AND PRACTICES

SECTION 9.01. DIVISION OF COMPLIANCE AND PRACTICES. (a) The division of compliance and practices shall monitor the conduct of all persons subject to this Act other than persons monitored by the division of medical review. The monitoring shall include monitoring the conduct of:

(1) persons claiming benefits under this Act;

(2) employers;

(3) insurance carriers; and

(4) attorneys and other representatives of parties.

(b) The division shall monitor those persons for compliance with commission rules, this Act, and other laws relating to workers' compensation.

SECTION 9.02. PERFORMANCE REVIEW OF INSURANCE CARRIERS. The division shall review the workers' compensation records of insurance carriers on a regular basis as required to ensure compliance with this Act. Each insurance carrier, the carrier's agents, and those with whom the carrier has contracted to provide, review, or monitor services under this Act shall cooperate with the division and shall make available to the division any records or other necessary information. The insurance carrier, the carrier's agents, and those with whom the carrier has contracted to provide, review, or monitor services under this Act shall allow the division access to the information at reasonable times at the offices of the insurance carrier, the carrier's agents, and those with whom the carrier has contracted to provide, review, or monitor services under this Act. The insurance carrier, other than a governmental entity, shall pay the reasonable expenses, including travel expenses, of an auditor who audits the workers' compensation records at the offices of the insurance carrier.

SECTION 9.03. MONITORING OF TIMELY PAYMENTS. The division shall also monitor payments to health care providers on behalf of workers' compensation claimants who receive medical services to assure that the payments are made on a timely basis as provided in Section 4.68 of this Act.

SECTION 9.04. COMPILATION OF INFORMATION. The division shall compile and maintain statistical and other information as necessary to detect practices or patterns of conduct by persons subject to monitoring under this article that violate this Act or commission rules or that otherwise adversely affect the

workers' compensation system of this state. The commission shall use the information to assess appropriate penalties and other sanctions under Article 10 of this Act.

SECTION 9.05. PENALTIES AND SANCTIONS FOR HEALTH CARE PROVIDERS. The division shall review information and referrals from the division of medical review concerning alleged violations of this Act and, under Section 9.06 and Article 10 of this Act, may conduct investigations, make referrals, and initiate administrative violation proceedings.

SECTION 9.06. INVESTIGATIONS. (a) The division shall establish an investigation unit to conduct investigations relating to alleged violations of this Act or commission rules, with particular emphasis on violations of Article 10 of this Act.

(b) The division may refer the persons involved in a case subject to an investigation to the division of hearings or to other appropriate authorities, including licensing agencies, district and county attorneys, or the Attorney General of the State of Texas, for further investigation or institution of appropriate proceedings.

ARTICLE 10. PENALTIES AND SANCTIONS

CHAPTER A. PROHIBITED ACTS

SECTION 10.01. DELETED.

SECTION 10.02. EMPLOYER CHARGEBACKS PROHIBITED. (a) Except as provided in Sections 3.05 and 3.06 of this Act, an employer may not collect from an employee, directly or indirectly, any premium or other fee paid by the employer to obtain workers' compensation insurance coverage.

(b) An employee or legal beneficiary of an employee has a right of action to recover damages against an employer who violates Subsection (a) of this section.

(c) A violation of Subsection (a) of this section is a Class C administrative violation.

SECTION 10.03. LOANS BY ATTORNEYS PROHIBITED. (a) An attorney who represents a claimant before the commission may not lend money to the claimant during the pendency of the workers' compensation claim.

(b) The attorney may assist the claimant in obtaining financial assistance from another source if the attorney is not personally liable in any way for the credit extended to the claimant.

SECTION 10.04. FRAUDULENTLY OBTAINING OR DENYING BENEFITS; ADMINISTRATIVE VIOLATION. (a) A person commits a Class B administrative violation if the person, to obtain or deny payments of workers' compensation benefits or the provision of those benefits for himself or another, knowingly or intentionally:

(1) makes a false or misleading statement;

(2) misrepresents or conceals a material fact;

(3) fabricates, alters, conceals, or destroys a document; or

(4) conspires to commit an act listed in Subdivision (1), (2), or (3) of this section.

(b) A person who has obtained excess payments in violation of this section is liable for full repayment plus interest calculated as prescribed by Section 1.04 of this Act. If the person is an employee or person claiming death benefits, the liability for repayment may be redeemed from future income or death benefits to which the person is otherwise entitled.

(c) An employer who has committed an act described by this section that results in denial of payments is liable for the past compensation payments which would otherwise have been payable by the insurance carrier during the period of denial, plus the interest due on those payments, calculated as prescribed by Section 1.04 of this Act. The insurance carrier is not liable for benefit payments during the period of denial.

(d) If an administrative violation proceeding is pending under this section against an employee or person claiming death benefits, the commission may not take final action on the person's compensation.

SECTION 10.05. FRIVOLOUS ACTIONS; ADMINISTRATIVE VIOLATION. A person who knowingly brings, prosecutes, or defends an action for compensation under this Act or requests initiation of an administrative violation proceeding that has no basis in fact or is not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law commits a Class B administrative violation.

SECTION 10.06. BREACH OF AGREEMENT; ADMINISTRATIVE VIOLATION. A party to an agreement approved by the commission who knowingly breaches a provision of the agreement commits a Class C administrative violation.

SECTION 10.07. WRONGFUL ACTS. (a) The division of compliance and practices shall monitor the conduct described in this section and refer persons engaging in that conduct to the division of hearings. The following acts by the representative of an employee or legal beneficiary, if undertaken wilfully or intentionally, constitute administrative violations and are subject to Chapter B of this article:

(1) failing without good cause to attend a dispute resolution proceeding within the commission;

(2) committing an act of barratry as defined by the laws of this state;

(3) withholding amounts not authorized by the commission from the employee's or legal beneficiary's weekly compensation or from advances;

(4) entering into a settlement or agreement without the knowledge, consent, and signature of the employee or legal beneficiary;

(5) taking a fee or withholding expenses in excess of the amounts authorized by the commission;

(6) refusing or failing to make prompt delivery to the employee or legal beneficiary of funds belonging to the employee or legal beneficiary as a result of a settlement, agreement, order, or award;

(7) violating the Code of Professional Responsibility of the State Bar of Texas;

(8) misrepresenting to an employee, an employer, a health care provider, or a legal beneficiary the provisions of this Act;

(9) attending a dispute resolution proceeding within the commission without complete authority or failing to exercise authority to effectuate an agreement or settlement;

(10) violating Section 10.04 of this Act;

(11) violating any rule of the commission; or

(12) failure to comply with any provision of this Act.

(b) The following acts by an insurance carrier or its representative, if undertaken wilfully or intentionally, constitute administrative violations and are subject to Chapter B of this article:

(1) misrepresenting a provision of this Act to an employee, an employer, a health care provider, or a legal beneficiary;

(2) failing to submit to the commission any settlement or agreement of the parties;

(3) failing to timely notify the commission of the termination or reduction of compensation and the reason for that action;

(4) terminating or reducing compensation without substantiating evidence that that action is reasonable and authorized by law;

(5) instructing employers not to file required documents with the commission;

(6) instructing or encouraging employers to violate the claimant's right to medical benefits under this Act;

(7) failing to tender promptly full death benefits if a legitimate dispute does not exist as to the liability of the insurance carrier;

(8) allowing an employer, other than a self-insured employer, to dictate the methods by which and the terms on which a claim is handled and settled; however, this subdivision does not prohibit the free discussion of a claim, prohibit the employer's assistance in the investigation and evaluation of a claim, or prohibit the employer's attendance at proceedings of the commission and participation at those proceedings as prescribed by this Act;

(9) failing to confirm medical benefits coverage to any person or facility providing medical treatment to a claimant if a legitimate dispute does not exist as to the liability of the insurance carrier;

(10) failing, without good cause, to attend a dispute resolution proceeding within the commission;

(11) attending a dispute resolution proceeding within the commission without complete authority or failing to exercise authority to effectuate agreement or settlement;

(12) adjusting workers' compensation claims in any manner contrary to the provisions of the licensure as an insurance adjuster, including the requirements of Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code), or the rules of the State Board of Insurance;

(13) failing to process claims promptly in a reasonable and prudent manner;

(14) failing to initiate or reinstate compensation when due if a legitimate dispute does not exist as to the liability of the insurance carrier;

(15) misrepresenting the reason for not paying compensation or terminating or reducing the payment of compensation;

(16) misdating documents to misrepresent the true date of the initiation of compensation;

(17) making notations on drafts or other instruments to indicate that the draft or instrument represents a final settlement of a claim if the claim is still open and pending before the commission;

(18) failing or refusing to pay compensation from week to week as and when the compensation is due directly to the person entitled to the compensation;

(19) failing to pay an order awarding compensation;

(20) controverting claims if the evidence clearly indicates liability;

(21) unreasonably denying preauthorization required under Section 8.28 of this Act or unreasonably disputing the reasonableness and necessity of health care;

(22) violating any rule of the commission; or

(23) failure to comply with any provision of this Act.

(c) The following acts by a health care provider if undertaken wilfully or intentionally constitute administrative violations and are subject to Chapter B of this article:

(1) submitting charges for health care that was not furnished;

(2) administering improper, unreasonable, or medically unnecessary treatment or services;

(3) failing or refusing to timely file required reports or records;

(4) violating Section 8.42 of this Act;

(5) making unnecessary referrals;

(6) failing to disclose an interest as required by Section 8.41 of this Act;

(7) violating the commission's fee and treatment guidelines;

(8) violating any rule of the commission; or

(9) failure to comply with any provision of this Act.

(d) A person who engages in acts prohibited under this section as a matter of practice commits an administrative violation. In addition to any penalties assessed for the violations, the person may be subject to rules promulgated by the commission providing for:

(1) a reduction or denial of fees;

(2) public or private reprimand by the commission;

(3) suspension from practice before the commission; or

(4) restriction, suspension, or revocation of the right to receive reimbursement under this Act.

SECTION 10.08. OVERCHARGING BY HEALTH CARE PROVIDERS PROHIBITED; OFFENSE; ADMINISTRATIVE VIOLATION. (a) A health care provider who knowingly charges an insurance carrier an amount greater than that normally charged for similar treatment to a payor outside the workers' compensation system, except for mandated or negotiated charges, commits an offense.

(b) An offense under this section is a Class A misdemeanor.

(c) A health care provider who charges an insurance carrier an amount greater than that normally charged for similar treatment to a payor outside the workers' compensation system, except for mandated or negotiated charges, commits a Class B administrative violation. A health care provider may be liable for an administrative penalty regardless of whether a criminal action is initiated under this section.

[Sections 10.09-10.20 reserved for expansion]

CHAPTER B. PENALTY AND SANCTION PROCEDURES

SUBCHAPTER 1. ADMINISTRATIVE VIOLATIONS AND PENALTIES

SECTION 10.21. ADMINISTRATIVE VIOLATIONS AND PENALTIES. (a) The commission may assess an administrative penalty against a person who commits an administrative violation.

(b) The commission may assess an administrative penalty not to exceed $10,000 and may enter a cease and desist order against a person who:

(1) commits repeated administrative violations;

(2) allows, as a business practice, the commission of repeated administrative violations; or

(3) violates an order or decision of the commission.

(c) The commission shall consider the following factors in assessing an administrative penalty:

(1) the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act;

(2) the history and extent of previous administrative violations;

(3) the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;

(4) any economic benefit resulting from the prohibited act;

(5) the penalty necessary to deter future violations; and

(6) any other matters that justice may require.

(d) A penalty may be assessed only after the person charged with an administrative violation has been given an opportunity for a hearing under Subchapter 2 of this chapter.

SECTION 10.22. CLASSIFICATIONS OF ADMINISTRATIVE VIOLATIONS AND PENALTIES. Administrative violations are classified as follows:

(1) a Class A administrative violation, punishable by an administrative penalty not to exceed $10,000;

(2) a Class B administrative violation, punishable by an administrative penalty not to exceed $5,000;

(3) a Class C administrative violation, punishable by an administrative penalty not to exceed $1,000; and

(4) a Class D administrative violation, punishable by an administrative penalty not to exceed $500.

[Sections 10.23-10.30 reserved for expansion]

SUBCHAPTER 2. ADMINISTRATIVE VIOLATION PROCEEDINGS

SECTION 10.31. INITIATION OF ADMINISTRATIVE VIOLATION PROCEEDINGS. Any person may request the initiation of administrative violation proceedings by filing written allegations with the director of the division of compliance and practices.

SECTION 10.32. NOTICE OF POSSIBLE ADMINISTRATIVE VIOLATION; RESPONSE. (a) If investigation by the division of compliance and practices indicates that an administrative violation has occurred, the division shall notify the person in writing of:

(1) the charge;

(2) the proposed penalty;

(3) the right to consent to the charge and the penalty; and

(4) the right to request a hearing.

(b) Not later than the 20th day after the date on which notice is received, the charged party shall:

(1) remit the amount of the penalty to the commission; or

(2) submit to the commission a written request for a hearing.

SECTION 10.33. HEARING PROCEDURES. (a) On request of the charged party or at the discretion of the director of the division of hearings, the division of hearings shall set a hearing. The hearing shall be conducted in the manner provided for a contested case under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(b) At the close of the hearing, the hearing officer conducting the hearing shall make findings of fact and conclusions of law and shall issue a written decision. If the hearing officer determines that an administrative violation has occurred, the decision shall set forth the amount of the penalty assessed and shall order payment of the penalty.

(c) The findings of fact, the decision, and the order shall be sent immediately to the charged party.

SECTION 10.34. FAILURE TO RESPOND. If, without good cause, a charged party fails to respond as required under Section 10.32 of this Act, the penalty is due and the commission shall initiate enforcement proceedings.

SECTION 10.35. JUDICIAL REVIEW. (a) A decision in a hearing under Section 10.33 of this Act is subject to judicial review in the manner provided for judicial review under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(b) If an administrative penalty is assessed, the person charged must either:

(1) forward the amount of the penalty to the executive director for deposit in an escrow account; or

(2) post with the executive director a bond for the amount of the penalty, to be effective until all judicial review of the violation determination is final.

(c) Failure to comply with Subsection (b) of this section results in a waiver of all legal rights to contest the violation or the amount of the penalty.

(d) If the court determines that the penalty should not have been assessed or should be reduced, the executive director shall:

(1) remit the appropriate amount, plus accrued interest, if the administrative penalty was paid; or

(2) release the bond.

[Sections 10.36-10.40 reserved for expansion]

CHAPTER C. ACTIONS AGAINST INSURANCE CARRIER FOR BREACH OF DUTY

SECTION 10.41. CERTAIN CAUSES OF ACTION PRECLUDED. An action taken by an insurance carrier pursuant to an order of the commission or recommendations of a benefit review officer under Section 6.15 of this Act may not be the basis of a cause of action against the insurance carrier for a breach of duty of good faith and fair dealing.

SECTION 10.42. EXEMPLARY DAMAGES. In an action against an insurance carrier for a breach of the duty of good faith and fair dealing, recovery of exemplary damages is limited to the greater of four times the amount of actual damages or one-quarter of one million dollars. Such an action against a governmental entity or unit or an employee of a governmental entity or unit is governed by the Texas Tort Claims Act (Chapter 101, Civil Practice and Remedies Code) and Chapter 104, Civil Practice and Remedies Code.

ARTICLE 11. TEXAS WORKERS' COMPENSATION RESEARCH CENTER

SECTION 11.01. RESEARCH CENTER. (a) The Texas Workers' Compensation Research Center is created as an advisory body to the Texas Workers' Compensation Commission. The research center shall be constituted and operated in a manner that ensures that the research, findings, and conclusions are factual, fair, and unbiased.

(b) The research center shall conduct professional studies and research related to:

(1) the delivery of benefits;

(2) workers' compensation litigation and controversy;

(3) insurance rates and rate-making procedures;

(4) rehabilitation and reemployment of injured workers;

(5) workplace health and safety issues;

(6) quality and cost of medical benefits;

(7) drugs in the workplace, giving priority to public and private establishments in which drug abuse could have dire consequences to the public, and including a survey designed to identify future needs and current efforts of private and public employers to counterattack drug abuse and its effects in the workplace; and

(8) other matters relevant to the cost, quality, and operational effectiveness of the workers' compensation system.

SECTION 11.02. BOARD OF DIRECTORS. (a) The research center is governed by a board of directors, composed of nine members as follows:

(1) two members must be members of the commission, chosen by the commission, with one member a representative of wage earners and one member a representative of employers;

(2) one member must be the public counsel of the State Board of Insurance; and

(3) six members must be members of the public, with two members appointed by the speaker of the house of representatives, two members appointed by the lieutenant governor, and two members appointed by the governor.

(b) Appointments of the public members of the board of directors shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointee. Appointments are not subject to senate confirmation.

(c) A member of the board of directors is not liable for any act performed in good faith in the execution of duties as a board member.

SECTION 11.03. POWERS AND DUTIES OF BOARD OF DIRECTORS. (a) The board of directors shall:

(1) approve the research agenda of the research center;

(2) approve the operating budget of the research center;

(3) submit an annual written report on the activities conducted by the research center to the governor and the legislature;

(4) adopt rules to govern the operations of the board of directors and the research center;

(5) assure the quality of research products and economy in the use of funds through an appropriate use of research staff and research contracted with educational or other public or private research institutions and workers' compensation experts; and

(6) annually publish a proposed research agenda in the Texas Register, distribute the proposed agenda to Texas educational institutions with a demonstrated research capacity, and receive public comments on the proposed agenda, including conducting a public hearing if a hearing is requested by interested parties.

(b) The board of directors shall publish and disseminate its studies to interested persons. The board of directors may determine appropriate charges for the publications as necessary to achieve optimal dissemination.

(c) The board of directors may:

(1) contract with other persons or organizations, including institutions of higher education, for the execution of studies for the research center;

(2) contract with the commission for any or all of its fiscal, personnel, or other support functions; and

(3) appoint expert advisory committees to assist in the formulation of the research agenda, development of requests for research proposals, evaluation of research proposals, technical review of research products, and other purposes appropriate to the purposes of the research center.

(d) The board of directors may delegate powers to the executive director as it considers appropriate.

(e) The board of directors may take action by majority vote when a quorum is present.

SECTION 11.04. TERMS; VACANCY. (a) Public members of the board of directors serve for staggered terms of four years, with the terms of three appointed members expiring February 1 of each odd-numbered year.

(b) The members of the board of directors who serve also on the commission or as public counsel of the State Board of Insurance serve terms as determined by the appointing state agency.

(c) If a vacancy occurs during a term, the appointing officer or agency shall appoint a replacement who meets the qualifications of the vacated office to fill the unexpired part of the term.

SECTION 11.05. CHAIR. The board of directors shall elect one of its appointed members to serve as chair for a term of two years. The term of the chair expires on February 1 of each even-numbered year. The chair may vote on all matters before the board of directors.

SECTION 11.06. REMUNERATION. A member of the board of directors may not receive remuneration for serving on the board of directors. A member is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the board of directors subject to any limitation in the General Appropriations Act.

SECTION 11.07. MEETINGS. (a) The board of directors shall meet at least once in each quarter of the calendar year.

(b) The board of directors may meet at other times at the call of the chair or as provided by the rules of the board of directors.

SECTION 11.08. EXECUTIVE DIRECTOR; STAFF. (a) The board of directors shall employ the executive director of the research center. The executive director shall hire staff as necessary to accomplish the research objectives of the research center.

(b) The executive director of the research center shall administer the research center in accordance with the policies established by the board of directors.

(c) The executive director of the research center annually shall formulate a research agenda for review and approval by the board of directors.

SECTION 11.09. FUNDING; MAINTENANCE TAX; APPROPRIATION REQUEST. (a) The research center shall be funded through the assessment of a maintenance tax collected from each insurance carrier, except governmental entities. No more than one-tenth of one percent of the correctly reported gross workers' compensation insurance premiums may be assessed against insurance companies for this purpose. The tax is in addition to all other taxes imposed on those insurance carriers for workers' compensation purposes.

(b) The commission shall set the rate of the maintenance tax based on the expenditures authorized and the receipts anticipated in legislative appropriations. The tax on insurance companies shall be collected and paid in the same manner and at the same time as the maintenance tax established for the support of the State Board of Insurance under Article 5.68, Insurance Code.

(c) Amounts received under this section shall be deposited in the state treasury to the credit of a special fund to be used for the operation of the research center.

(d) The executive director of the research center shall develop a legislative appropriations request covering the operations of the research center. On approval of the request by the board of directors, the board of directors shall submit the request to the commission, which shall include the research center's request in the legislative appropriations request of the commission.

SECTION 11.10. COORDINATION WITH OTHER AGENCIES. The research center shall have access to the files and records of the Texas Workers' Compensation Commission, the Texas Employment Commission, the State Board of Insurance, the Texas Department of Human Services, and other state agencies as required to fulfill the research objectives of the research center. Those state agencies shall assist and cooperate in the provision of information to the research center. Information that is confidential under state laws shall be accessible to the research center under rules of confidentiality and shall remain confidential.

[Article 12 reserved for expansion]

ARTICLE 13. INSURANCE ISSUES

CHAPTER A. INSURANCE RATE REGULATION

SECTION 13.01. Section 1, Article 1.24A, Insurance Code, is amended to read as follows:

Sec. 1. DEFINITIONS. In this article:

(1) "Casualty [~~Liability~~] insurance" means the following types of insurance:

(A) general liability;

(B) medical professional liability;

(C) professional liability other than medical professional liability;

(D) commercial automobile liability;

(E) the liability portion of commercial multiperil coverage; [~~and~~]

(F) workers' compensation insurance; and

(G) any other types or lines of liability insurance designated by the State Board of Insurance under Section 3 of this article.

(2) "Insurer" means:

(A) each insurance company or other entity admitted to do business and authorized to write casualty [~~liability~~] insurance in this state, including county mutual insurance companies, Lloyd's plan companies, and reciprocal or interinsurance exchanges but excluding farm mutual insurance companies and county mutual fire insurance companies writing exclusively industrial fire insurance as defined by Article 17.02 of this code; and

(B) each pool, joint underwriting association, or self-insurance mechanism or trust authorized by law to insure its participants, subscribers, or members against liability, or for workers' compensation coverage.

SECTION 13.02. Subsection (a), Section 2, Article 1.24A, Insurance Code, is amended to read as follows:

(a) On or before May 1 of each year, each insurer shall file with the State Board of Insurance a report covering its direct writings of casualty [~~liability~~] insurance in this state.

SECTION 13.03. Subsection (a), Section 3, Article 1.24A, Insurance Code, is amended to read as follows:

(a) The State Board of Insurance may adopt necessary rules and forms to carry out this article and to add other types and lines of casualty insurance [~~against liability~~] to the types and lines for which reports must be made under this article.

SECTION 13.04. Article 5.55, Insurance Code, is amended to read as follows:

Art. 5.55. WORKERS' [~~WORKMEN'S~~] COMPENSATION RATES. The Board shall make, establish and promulgate all classifications of hazards, rates of premiums and rating plans respectively applicable to each, contemplated and provided for by [~~Title 130, known as~~] the Texas Workers' Compensation Act or [~~Workmen's Compensation Law and/or~~] by the "Longshoremen's and Harbor Workers' Compensation Act" as enacted by the Congress of the United States. The [~~Said~~] Board shall publish all rates and rating plans promulgated by it as affecting compensation insurance [~~Compensation Insurance~~] in this State, which [~~and said rates and rating plans, or any change therein,~~] shall be published fifteen (15) days before they become effective [~~and in force~~].

SECTION 13.05. Article 5.58, Insurance Code, is amended to read as follows:

Art. 5.58. RATE ADMINISTRATION. (a) Recording and Reporting of Loss Experience and Other Data. The Board shall, after due consideration, promulgate reasonable rules and statistical plans, which may be modified from time to time and which shall be used thereafter by each insurer in the recording and reporting of its loss experience and such other data as may be required, in order that the total loss and expense experience of all insurers may be made available at least annually [~~biennially~~] in such form and detail as may be necessary to aid in determining whether rates comply with the standards set forth in Article 5.60. In promulgating such rules and plans, the Board shall have due regard for the rates approved by it, and in order that such rules and plans may be as uniform as is practicable, to the rules and to the form of the plans used in other states. The Board may designate one or more [~~rating organizations or other~~] agencies to gather and compile such experience.

(b) For purposes of Subsection (c) of this article, the Board shall establish standards and procedures for categorizing insurance and medical benefits reported on each workers' compensation claim. The Board shall consult with the Texas Workers' Compensation Commission and the Texas Workers' Compensation Research Center in establishing these standards to ensure that the data collection methodology will also yield data necessary for research and medical cost containment efforts.

(c) Content of Unit Statistical Data Reports. The following information shall be reported on each workers' compensation claim:

(1) the hazard classification of the affected employee;

(2) the date of injury;

(3) the social security number of the claimant;

(4) the severity classification of the claim, including separate classifications for claims in which death benefits are paid, claims in which lifetime income benefits are paid, claims in which only temporary income benefits are paid, claims in which impairment benefits are paid, claims in which supplemental benefits are paid, and claims in which only medical benefits are paid;

(5) the amount paid in periodic payments;

(6) the amount paid in lump-sum payments;

(7) the amount paid for temporary income benefits;

(8) the amount paid for impairment income benefits;

(9) the amount paid for supplemental income benefits;

(10) the amount paid for death and burial benefits;

(11) the total amount paid for income, death, or burial benefits;

(12) the total amount of incurred losses for income, death, or burial benefits;

(13) the amount paid to doctors and other health care providers;

(14) the amount paid to hospitals and other health care facilities;

(15) the total amount paid for medical benefits;

(16) the total amount of incurred losses for medical benefits; and

(17) other information required by the Board.

(d) Information Confidential. A person may not distribute or otherwise disclose a social security number or any other information collected under Subsection (c) of this article which would disclose the identity of any claimant.

(e) Payments Excluded From Rates. In any statistical plan promulgated by the Board, direct expenditures by an insurer to influence public policy and any amounts paid by an insurer as damages in a suit against the insurer for malice or bad faith or as fines or penalties shall be reported separately, and the expenditures and payments shall not be considered as a loss or expense for rate-making purposes under this subchapter or for the calculation of any premium rate modifier or surcharge of an insured.

(f) Transmission of Statistical Reports. The statistical reports filed under Subsection (c) of this article shall be updated by each insurer and transmitted to the Board in accordance with the filing requirements of the Board's promulgated statistical plan. Each insurer writing at least one-half of one percent of the workers' compensation insurance in this state shall report its data in a compatible electronic format prescribed by the Board. The Board shall take necessary measures to ensure the accuracy of the data and the adequacy of the format for data reported in an electronic format.

(g) Reports of Aggregate Data. The Board by rule may permit the information required by Subsection (c) of this article to be reported in the aggregate for each risk for claims in which benefit payments are less than $5,000. The Board may by rule adjust the dollar threshold for aggregate reporting to account for inflationary changes.

(h) Interchange of Rating Plan Data. Reasonable rules and plans may be promulgated by the Board after due consideration, requiring the interchange of loss experience necessary for the application of rating plans promulgated by the Board under this subchapter.

(i) [~~(c)~~] Consultation with Other States. In order to further uniform administration of rating laws, the Board and every insurer and advisory [~~rating~~] organization may exchange information and experience data with the National

Association of Insurance Commissioners, insurance supervisory officials, insurers, and advisory [~~rating~~] organizations in other states and may consult and cooperate with them with respect to rate-making and the application of rating systems.

(j) [~~(d)~~] Rules and Regulations. The Board may make reasonable rules and regulations necessary to effect the purposes of this subchapter.

SECTION 13.06. Article 5.60, Insurance Code, is amended to read as follows:

Art. 5.60. RATING. (a) The Board shall determine hazards by classes and fix [~~such~~] rates of premium applicable to the payroll in each of such classes as shall be adequate to the risks to which they apply and consistent with the maintenance of solvency and the creation of adequate reserves and a reasonable surplus. Those rates[~~, and for such purpose may adopt rating plans designed to encourage the prevention of accidents and to take account of the peculiar hazard and experience of individual risks, past and prospective, within and outside the State, and all other relevant factors, within and outside the State, provided such rate~~] shall be fair and reasonable and not confiscatory as to any class of insurance carriers authorized by law to write workers' compensation insurance [~~Workmen's Compensation Insurance~~] in this State. To ensure [~~insure~~] the adequacy and reasonableness of rates, the Board shall take into consideration the premium, loss, claim, and payroll experience, past and prospective, within [~~and outside~~] the State, and all other relevant factors, within and outside the State, gathered from a territory sufficiently broad to include the varying conditions of the industries in which the classifications are involved, and over a period sufficiently long to ensure [~~insure~~] that the rates determined [~~therefrom~~] shall be just, reasonable, [~~and~~] adequate, and not excessive [~~rates~~].

(b) In making its rate determination under this subchapter, the Board shall consider the probable investment income to be earned by insurers writing workers' compensation insurance in this state.

(c) Under Subsection (a) of this article, the Board shall establish for each hazard classification a manual rate, based on the average expected experience of risks in the classification and subject to the actuarial credibility of the class. In addition to any other modifications, the Board may adopt rules to modify the manual rate to provide for equity among employers of high and low wage earners.

(d) The Board shall adopt rating plans designed to encourage the prevention of accidents. The rating plans shall consider the peculiar hazard and experience of individual risks, past and prospective, within and outside this state, and all other relevant factors.

(e) This subchapter may not be construed to prohibit any stock company, mutual company, reciprocal or interinsurance exchange, or Lloyd's association from issuing participating policies; however, a dividend to policyholders under the Texas Workers' Compensation Act (S.B. No. 1, Acts of the 71st Legislature, 2nd Called Session, 1989) may not take effect until approved by the Board. Such a dividend may not be approved until adequate reserves have been provided, those reserves to be computed on the same basis for all classes of companies operating under this subchapter.

(f) The Board shall conduct a study to determine the feasibility of establishing a system of rate deviations to account for differences in the hazard levels of different geographical regions of this state. The Board shall report the findings of the study to the 72nd Legislature not later than January 15, 1991.

(g) The Board shall conduct a study to determine the feasibility, effectiveness, and efficiency of establishing a revised classification system. The Board shall report the findings of the study to the 72nd Legislature not later than January 15, 1991.

(h) An insurer that desires to write workers' compensation insurance at a rate lower than the rate promulgated by the Board shall file a written application with

the Board for permission to write workers' compensation insurance using a uniform percentage deviation by class for a lesser rate on a statewide basis. The deviated rate must be equal to at least 75 percent of the promulgated statewide rate. The application must specify the basis of the deviation and must be accompanied by the supporting information on which the applicant relies. An application filed under this subsection is considered approved by the Board unless the Board finds that the filing does not meet the requirements of this subchapter. The application is considered approved unless disapproved on or before the 60th day after the date it is received by the Board. On and after the date on which an application is approved or considered approved under this article, the insurer may write workers' compensation insurance in accordance with the approval. The authority to write insurance at the approved lesser rate may be suspended or revoked by the Board after notice and hearing if, on examination or at any other time, it appears to the Board that the rate no longer meets the requirements of this subchapter. The Board may promulgate rules specifying the forms and requirements of an application for deviation.

SECTION 13.07. Article 5.61, Insurance Code, is amended to read as follows:

Art. 5.61. ADEQUATE RESERVES. (a) Each workers' compensation insurer transacting business in this state shall maintain reserves in an amount estimated in the aggregate to provide for the payment of all losses and claims incurred, whether reported or unreported, but not in an amount greater than reasonably required for those purposes. The reserves shall be computed in accordance with any rules approved by the Board for the purpose of adequately protecting the insureds, securing the solvency of the insurer, and preventing unreasonably large reserves.

(b) Each workers' compensation insurer shall provide a separate report to the Board showing its year-end loss, expense, and unearned premium reserves for workers' compensation insurance results in this state. The report must be filed not later than June 30 of each year and must show the reserve development over a period of years sufficiently long to allow the Board to determine whether the reserves are adequate, inadequate, or unreasonably large. The report shall be audited by an independent certified public accountant in accordance with generally accepted auditing standards and the rules of the Board. The reserve amounts reported may be taken from an audited financial report prepared by an independent auditor as prescribed by law.

(c) If the reserves are determined to be inadequate, the Board shall notify the insurer and require the insurer to establish and maintain reasonable additional reserves. If the reserves are determined to be unreasonably large, the Board shall notify the insurer and require the insurer to reduce its reserves to a reasonable amount.

(d) Not later than the 60th day after the date of the notification by the Board that its reserves have been determined not to be in compliance with the requirements of this article, the insurer shall restore compliance and file a statement of restored compliance, together with such documentation as the Board may require. [~~Nothing in this subchapter shall be construed to prohibit the operation hereunder of any stock company, mutual company, reciprocal or interinsurance exchange, or Lloyd's association, to prohibit any stock company, mutual company, reciprocal or interinsurance exchange, or Lloyd's association, issuing participating policies, provided no dividend to subscribers under the Workmen's Compensation Act shall take effect until the same has been approved by the Board. No such dividend shall be approved until adequate reserve has been provided, said reserves to be computed on the same basis for all classes of companies or associations operating under this subchapter as prescribed under the applicable provisions of this code.~~]

SECTION 13.08. Subchapter D, Chapter 5, Insurance Code, is amended by adding Articles 5.55B, 5.55C, 5.57A, 5.58A, 5.60A, 5.65A, and 5.65B to read as follows:

Art. 5.55B. PREMIUM INCENTIVES FOR SMALL EMPLOYERS. (a) In this article "small employer" means an employer who is not experience-rated by the State Board of Insurance for workers' compensation insurance purposes and whose annual workers' compensation premium is less than $5,000.

(b) The Board shall promulgate a plan by which all insurance companies writing workers' compensation insurance in this state shall grant a discount to small employers who qualify under this article and by which surcharges are assessed against small employers who experience two or more employee compensable lost-time injuries during a one-year period.

(c) A small employer who has not experienced a compensable employee lost-time injury during the most recent one-year period for which statistics are available shall receive a discount of 10 percent on the amount of the employer's workers' compensation insurance premium.

(d) A small employer who has not experienced a compensable employee lost-time injury during the most recent two-year period for which statistics are available shall receive a discount of 15 percent on the amount of the employer's workers' compensation insurance premium.

(e) A small employer who has experienced one compensable employee lost-time injury during the most recent one-year period for which statistics are available is not eligible for a discount on the amount of the employer's workers' compensation insurance premium.

(f) A small employer who has experienced two or more compensable employee lost-time injuries during the most recent one-year period for which statistics are available shall be assessed a surcharge of 10 percent on the amount of the employer's workers' compensation premium.

(g) The discounts and surcharges established under this article are not cumulative; however, a small employer is entitled to receive the discount provided by this article in addition to any lesser deviation in the rate at which a policy is written under Article 5.60 of this code. For any annual workers' compensation premium, a small employer may not receive a discount of more than 15 percent, and a small employer may not be required to pay a surcharge of more than 10 percent.

Art. 5.55C. OPTIONAL DEDUCTIBLE PLANS. (a) The Board shall require each company or association that writes workers' compensation insurance in this state to offer optional deductible plans to allow policyholders to self-insure for the deductible amount.

(b) Not later than January 1, 1992, the Board shall promulgate at least three plans with varying deductible options. In addition, the Board by rule shall permit an employer to enter into an agreement with an insurer for a negotiated deductible in excess of the largest promulgated deductible.

(c) The Board shall perform an actuarial analysis to determine the amount of rate reduction applicable to policies under this article as opposed to standard policies without a deductible. In subsequent years, the Board shall determine the amount of rate reduction according to rating procedures adopted by the Board. When establishing procedures for the calculation of experience modifiers, the Board may allow the exclusion of the claim amount paid under the deductible by the employer.

(d) A deductible policy must provide that the company or association will make all payments for benefits that are payable from the deductible amount and that reimbursement by the policyholder shall be made periodically, rather than at the time claim costs are incurred. The State Board of Insurance shall promulgate rules

that provide for adequate security for reimbursement of the amount paid by the company or association which is payable from the deductible.

(e) The company or association shall service all claims that arise during the policy period, including those claims payable, in whole or in part, from the deductible amount.

(f) A person who is employed by a policyholder who self-insures the deductible amount as provided under this article may not be required to pay any of the deductible amount.

(g)(1) A person who is employed by a policyholder who self-insures the deductible amount as provided under this article may not be harassed, discharged, or otherwise discriminated against because the employee, in good faith:

(A) is considering initiating a workers' compensation claim;

(B) has initiated a workers' compensation claim;

(C) has retained a representative to represent the employee regarding a claim;

(D) has testified or is about to testify at an administrative or judicial proceeding under the Texas Workers' Compensation Act (**S.B. No. 1**, Acts of the 71st Legislature, 2nd Called Session, 1989);

(E) has reported a hazardous working condition or hazardous practice to the commission; or

(F) has taken any other action or is considering taking any other action that may result in the policyholder being required to pay a deductible amount through the self-insurance plan.

(2) Liability for damages for violations of this article shall be determined exclusively pursuant to the Texas Workers' Compensation Act (**S.B. No. 1**, Acts of the 71st Legislature, 2nd Called Session, 1989).

(h) Any person who engages in conduct prohibited under this article commits a Class A administrative violation under the Texas Workers' Compensation Act (**S.B. No. 1**, Acts of the 71st Legislature, 2nd Called Session, 1989).

Art. 5.57A. GROUP PURCHASE OF WORKERS' COMPENSATION INSURANCE. (a) In this article:

(1) "Board" means the State Board of Insurance.

(2) "Business entity" means a business enterprise owned by a single person or a corporation, organization, business trust, trust, partnership, joint venture, association, or other business entity.

(3) "Group" means two or more business entities that join together with the approval of the Board to purchase individual workers' compensation insurance policies covering each business entity that is a part of the group.

(b) On receiving approval of the Board as provided by this article, two or more business entities may join together to form a group to purchase individual workers' compensation insurance policies covering each member of the group.

(c) To be eligible to join a group, a business entity must be engaged in a business pursuit that is the same as or similar to the other business entities participating in the group as determined by the Board.

(d) The Board shall establish a certification program for groups organized under this article and shall issue certificates of approval to eligible business entities authorizing formation and maintenance of a group.

(e) The Board by rule shall adopt forms, criteria, and procedures for the issuance of certificates of approval to groups under this article.

(f) A group certified under this article may purchase individual workers' compensation insurance policies covering each member of the group from any insurer authorized to write workers' compensation insurance in this state. Under such a policy, the group is entitled to any premium or volume discount that would be applicable to a policy of the combined premium amount.

(g) A group shall apportion any discount or policyholder dividend received on workers' compensation insurance coverage among the members of the group according to a formula adopted in the plan of operation for the group.

(h) Manual rules and rates shall be used in computing the rates for policies under this article, and the Board shall determine any experience rating factor that shall be applied to those group policies as provided by the Board's rules.

(i) A group shall adopt a plan of operation that shall include the composition and selection of a governing board, the methods for administering the group, and guidelines for the workers' compensation insurance coverage obtained by the group including the payment of premiums, the distribution of discounts, and the methods for providing risk management. A group shall file a copy of its plan of operation with the Board.

(j) A group established under this article is entitled to any deviation applicable under Article 5.60 of this code. A member of a group is not subject to the discounts and surcharges established under Article 5.55B of this code.

Art. 5.58A. REPORTING OF STATISTICAL DATA. (a) Each insurer transacting workers' compensation insurance business in or through a licensed agent in this state shall file annually with the State Board of Insurance, on or before April 1 of each year, the statistical information required under this subsection for all workers' compensation insurance coverage for the preceding calendar-accident year and policy years. The required statistical information shall include:

(1) premiums written;

(2) premiums earned;

(3) payroll;

(4) number and total amount of claims paid;

(5) number and total amount of claims unpaid;

(6) number and total amount of claims incurred;

(7) loss reserves for all known claims at the beginning and at the end of the year;

(8) reserves for losses incurred but not reported at the beginning and at the end of the year;

(9) adjustments to loss reserves;

(10) itemized direct incurred allocated loss adjustment expenses, including:

(A) attorney's fees for claims; and

(B) other allocated loss adjustment expenses;

(11) itemized direct incurred unallocated loss adjustment expenses;

(12) underwriting income or loss;

(13) commissions and brokerage fees;

(14) taxes, licenses, and fees;

(15) other acquisition costs;

(16) itemized general expenses;

(17) policyholder dividends;

(18) net surplus allocated to workers' compensation business in this state; and

(19) net investment gain on surplus and reserves for losses, loss expenses, and unearned premiums arising from writing workers' compensation insurance in this state.

(b) Information filed under this article shall include actual experience only, without application of loss trends, loss development factors, or other adjustments.

(c) The Board shall adopt procedures for the verification of the information filed by insurers under this article. The Board may be assisted by a licensed advisory organization and the Office of Public Insurance Counsel.

(d) A summary of the information provided under this section shall be included in the Board's annual report.

(e) The Board may require any additional information it considers necessary to be filed in the annual statistical report required by this article.

(f) The Board shall aggregate all of the information filed under this article, to be used for rate-making purposes by the Board. The Board shall provide the information on request to all parties to rate hearings free of charge.

(g) The Board shall promulgate rules and forms necessary to implement this article.

(h) This section does not prohibit an advisory organization from receiving copies of the statistical reports filed with the Board or any additional data it may seek from its members.

Art. 5.60A. RATE HEARINGS. (a) The Board shall conduct an annual hearing to review rates to be charged for workers' compensation insurance written in this state under this subchapter. The hearing shall be conducted under the contested case provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(b) The Board shall conduct a hearing six months prior to the annual hearing to revise rates to establish the methodology and sources of data to be used in reviewing rates. The hearing shall be conducted under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(c) To assist the Board in making rates and to provide additional information on certain trends that may affect the costs of workers' compensation insurance, the executive director of the Texas Workers' Compensation Commission or a person designated by that officer shall testify at any rate hearing conducted under this article. The testimony shall relate to trends in:

(1) claims resolution of workers' compensation cases; and

(2) cost components in workers' compensation cases.

(d) The testimony of the executive director or designee is subject to cross-examination by the Board and any party to the hearing.

(e) The Board shall consider changes in the workers' compensation laws when setting workers' compensation insurance rates.

Art. 5.65A. NOTIFICATION TO POLICYHOLDER. (a) A company or association that writes workers' compensation insurance in this state shall notify each policyholder of any claim that is filed against the policy. Thereafter a company shall notify the policyholder of any proposal to settle a claim or, on receipt of a written request from the policyholder, of any administrative or judicial proceeding relating to the resolution of a claim, including a benefit review conference conducted by the Texas Workers' Compensation Commission.

(b) Each company or association that writes workers' compensation insurance in this state, on written request of the policyholder, shall provide the policyholder with a list of claims charged against the policy, payments made and reserves established on each claim, and a statement explaining the effect of claims on premium rates.

(c) An insurance carrier that fails to comply with this article commits a Class D administrative violation under the Texas Workers' Compensation Act (**S.B. No. 1**, Acts of the 71st Legislature, 2nd Called Session, 1989).

(d) Any policyholder may elect to waive the notification required by Subsection (a) of this article.

Art. 5.65B. DISCLOSURE BY POLICYHOLDER. (a) A policyholder shall make full disclosure to its insurance company of information concerning its true ownership, change of ownership, operations, or payroll and any of its records pertaining to workers' compensation insurance.

(b) To the end that no employer shall evade an unfavorable or high cost experience, incurred experience shall be used in future ratings regardless of any change in ownership, control, management, or operations.

(c) The board, on application of an affected party, may modify the rating on proof that a change in management or operations is clearly probable to reduce the loss experience of the insured.

(d) The board shall promulgate rules necessary to implement this article.

[Sections 13.09-13.10 reserved for expansion]

CHAPTER B. INSURANCE FACILITY

SECTION 13.11. (a) Subchapter G, Chapter 5, Insurance Code, is amended by adding Article 5.76-2 to read as follows:

Art. 5.76-2. TEXAS WORKERS' COMPENSATION INSURANCE FACILITY

PART 1. GENERAL PROVISIONS

Sec. 1.01. DEFINITIONS. In this article:

(1) "Board" means the State Board of Insurance.

(2) "Designated insurer" means any insurer authorized by the facility to issue small premium policies through the plan.

(3) "Facility" means the Texas workers' compensation insurance facility established under this article.

(4) "Fund" means the employers' rejected risk fund for providing workers' compensation insurance coverages for rejected risks.

(5) "Good faith" for the purposes of this article only means honesty in fact in any conduct or transaction.

(6) "Insurance" means those types of insurance described in Section 2.05 of this article.

(7) "Insurer" means a stock company, mutual company, reciprocal, interinsurance exchange, or Lloyd's association authorized to write workers' compensation insurance in this state.

(8) "Member" means an insurer that is a member of the facility.

(9) "Plan" means the small premium policy plan for providing workers' compensation insurance coverages for a small premium policy.

(10) "Rejected risk" means an employer, other than one eligible for a small premium policy through the plan, that is in good faith entitled to insurance but is unable to procure or retain insurance through ordinary methods in the voluntary market. The term includes any and all legal entities that may be combined for experience rating purposes according to the rules of the board.

(11) "Servicing company" means a member of the facility or other eligible entity that is designated by the board to issue a policy that evidences the insurance coverages provided by the fund to a rejected risk and to service the risk as provided by this article.

(12) "Small premium policy" means a Texas standard workers' compensation insurance policy issued to an employer in this state for which the annual premium is less than $5,000 and which is not expected to develop more than $5,000 in premiums during the next 12 months. To be considered a small premium policy, a policy's governing classification must be in hazard group I, II, or III, as determined in retrospective rating plans approved in the State of Texas. An employer with a loss ratio in excess of 0.70 during each of the most recent three years for which data are available shall not be eligible for a small premium policy.

PART 2. TEXAS WORKERS' COMPENSATION INSURANCE FACILITY

Sec. 2.01. ORGANIZATION. For the purpose of carrying into effect the provisions of this article and with the approval of the board, the Texas workers' compensation assigned risk pool is revised, amended, and continued as the Texas workers' compensation insurance facility, a nonprofit unincorporated association of insurers, and every such insurer shall be a member of the facility and shall remain a member as a condition of its authority to write or provide or to continue writing or providing in this state any of the insurance coverages provided for in this article. As a prerequisite to the writing of such insurance in this state every member of the facility shall file with the board written authority permitting the facility to act in its behalf, as provided by this article.

Sec. 2.02. PURPOSE. The facility shall provide workers' compensation coverages for employers in this state as follows:

(1) for small premium policy employers, the insurance shall be provided under the small premium policy plan; and

(2) for rejected risks, the insurance shall be provided through the employer's rejected risk fund.

A member company which is not a designated insurer is not prohibited from voluntarily writing any workers' compensation insurance policies for which it is authorized.

Sec. 2.03. GOVERNING COMMITTEE. (a) The facility shall be governed by a governing committee of nine voting members and two nonvoting members.

(b) The nine voting members will be appointed by the board as follows:

(1) six voting members shall represent workers' compensation insurance companies, of which no more than two are servicing companies, initially appointed by the board as follows: two members for a two-year term; two members for a four-year term; and two members for a six-year term. At the expiration of the appointed terms, two members shall be appointed every two years by the board for six-year terms. No member shall serve more than one six-year term; and

(2) three voting members shall include one representative of labor, one representative of business, and one representative of the public, initially appointed by the board as follows: the labor representative for a two-year term; the business representative for a four-year term; and the public representative for a six-year term. At the expiration of the initial terms of appointment, one representative shall be appointed every two years for a six-year term. No representative shall serve more than one six-year term.

(c)(1) The nonvoting, ex officio members shall be the representative of the Texas Workers' Compensation Commission and the public counsel of the State Board of Insurance.

(2) The ex officio, nonvoting members shall not be considered in determining a quorum of the governing committee.

(3) The duties and responsibilities of the members shall be provided in the bylaws, rules, and regulations of the facility adopted by the membership of the facility and approved by the board as provided by Section 2.04 of this article.

Sec. 2.04. FACILITY BYLAWS, RULES, AND REGULATIONS. (a) Subject to the approval of the board, the facility may adopt, amend, and repeal bylaws, rules, and regulations necessary to implement this article. All bylaws, rules, regulations, practices, policies, and procedures of the facility shall provide for the economic, fair, efficient, and nondiscriminatory administration of this article.

(b) The facility may adopt, amend, or repeal bylaws, rules, and regulations at any regular meeting of the members of the facility or at any special meeting called for that purpose by a majority vote of those members present in person or voting by proxy. Notice of such proposed adoption, amendment, or repeal shall be mailed

to all members not less than the 20th day before the meeting at which adoption, amendment, or repeal is to be considered. The adoption, amendment, or repeal shall become effective on approval of the board.

(c) All bylaws, rules, and regulations of the facility shall be subject to the continuing jurisdiction of the board. If the board at any time believes that any bylaw, rule, or regulation is not in keeping with the purposes of this article, it shall notify the governing committee of the facility in writing so that corrective action may be taken.

Sec. 2.05. DUTIES AND FUNCTIONS OF THE FACILITY. (a) The governing committee shall hire an executive director who shall serve at the pleasure of the committee. The executive director shall hire other personnel to perform the functions of the facility.

(b) The facility shall provide insurance, in the manner herein provided, for any risk, under the Texas Workers' Compensation Act (**S.B. No. 1**, Acts of the 71st Legislature, 2nd Called Session, 1989), the Longshore and Harbor Workers' Compensation Act (33 U.S.C. Section 901), or the Federal Mine Safety and Health Act of 1977 (33 U.S.C. Section 801 et seq.), or for any city, county, or any other political subdivision, agency, or department of the state authorized to provide workers' compensation insurance for its employees under any laws of this state, heretofore or hereafter enacted. After the rules adopted under Section 2.04 of this article have been approved by the board, the procedures and remedies established under this article shall be the exclusive procedure for any applicant to the facility to secure or maintain the insurance available under this article.

Sec. 2.06. FINANCING. The facility shall pay all costs and expenses of operating and maintaining the facility, including any fees for servicing policies issued through or reinsured by the facility. Funds of this state shall not be appropriated or expended for payment of any costs or expenses incurred in the operation or maintenance of the facility. The facility is not subject to the taxes imposed by Chapter 151, Tax Code, for insurance services necessary to administer this article.

Sec. 2.07. INVESTMENTS. The facility shall invest its funds only in interest-bearing time deposits or certificates of deposit in any bank or banks doing business in the State of Texas which are members of the Federal Deposit Insurance Corporation, treasury bills, notes, or any other treasury obligations of the United States of America or in any other investments as may be proposed by the governing committee and approved by the board.

Sec. 2.08. APPEALS OF FACILITY DECISIONS. (a) An applicant for insurance, an insured, or an insurer aggrieved by an act or decision of the facility may appeal to the board not later than the 30th day after the affected party had actual notice that the act occurred or the decision was made.

(b) The board shall hear the appeal from an act or decision of the facility not later than the 30th day after the day the request for hearing is made. The board shall notify the facility and the appellant in writing of the time and place of the hearing not later than the 10th day before the date of the hearing. Not later than the 30th day after the last day of the hearing, the board shall affirm, reverse, or modify its previous action on the act appealed to the board.

(c) A hearing does not suspend the operation of any act, ruling, decision, or order of the facility, unless the board specifically so orders.

(d) A decision of the board under this section is subject to judicial review in the manner provided in the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

Sec. 2.09. APPEALS BY FACILITY. (a) If the fund or facility is adversely affected by an act or decision of the board, it may make a written request for reconsideration to the board not later than the 30th day after the act or decision.

(b) The board shall hear the facility's request for reconsideration not later than the 30th day after the day the request for hearing is made. The board shall notify the facility in writing of the time and place of the hearing not later than the 10th day before the date of the hearing. Not later than the 30th day after the last day of the hearing, the board shall affirm, reverse, or modify its previous action.

(c) A hearing does not suspend the operation of any classification, rate, policy, policy form, rule, regulation, order, or other action by the board under this article, unless the board specifically so orders.

(d) A decision of the board on reconsideration is subject to judicial review in the manner provided in the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

Sec. 2.10. FACILITY REPORTS. The facility shall file annually with the board a report containing information with respect to its transactions, conditions, operations, and investments during the preceding year. The report shall contain such information as prescribed by and in such form as approved by the board. The board may at any time require the facility to furnish additional information with respect to its transactions, conditions, investments, or any matter connected therewith considered to be material in evaluating the economic, efficient, fair, and nondiscriminatory administration of this article.

Sec. 2.11. OPEN MEETINGS AND OPEN RECORDS REQUIREMENTS. The facility is a governmental body only for purposes of the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), except that an employee's workers' compensation claim file in possession of the facility or servicing companies is not subject to disclosure under this section.

Sec. 2.12. LIABILITY. There shall be no liability on the part of and no cause of action shall arise against the governing committee, the facility, its executive director, or any of its staff, agents, servants, or employees arising out of or in connection with any judgment or decision made in connection with the performance of the powers and duties under this article or for recommendation or decision concerning any inspections or safety engineering investigations performed or for any recommendation or decision made in good faith.

PART 3. SMALL PREMIUM POLICY PLAN

Sec. 3.01. PROVISION FOR COVERAGES. The board is hereby authorized to establish, either within the facility or a separate facility or pool, an employers' safety plan through which a designated insurer shall provide insurance coverages for any eligible employer under a small premium policy. An eligible employer may apply for coverage through a licensed agent. The board may establish the most appropriate procedure for handling employers applying for a small premium policy. Such procedures could include either assignments to designated insurers or servicing carriers, or a procedure whereby the employer can select a designated insurer through licensed agents, or any other procedure deemed appropriate by the board. If the board adopts a procedure providing for servicing carriers, the amount of fees paid to the servicing carriers shall be consistent with competitive bidding procedures provided for in this article. The insurer may retain the risk for its own account or may reinsure the risk through the plan established by the board. In either case, the designated insurer or servicing carrier must provide the employer with the services required by law.

Sec. 3.02. APPOINTMENT OF DESIGNATED INSURERS. (a) The board shall establish standards, practices, and procedures for member companies to act as designated insurers. Any member company eligible to act as a designated insurer shall be a designated insurer unless the board allows an exemption from services as such. To be exempt, a carrier must show good cause for the exemption.

(b) To be eligible to act as a designated insurer, an insurer must be a member of the facility, must have written in Texas at least $7 million in premiums for workers' compensation insurance policies in each of the past three calendar years, and must meet such other requirements as may be established by the board. A designated insurer shall be subject to the service requirements of the facility and comply with other requirements applicable to designated insurers.

(c) The board may order a fair and reasonable limit or increase on the writings of a designated insurer if there is good cause shown for such limitation or increase. Whenever in any year a designated insurer shall accept small premium policies which approximately equal that designated insurer's proportionate share of the total market of small premium policies, it shall constitute good cause hereunder, and the board shall authorize and may require the cessation of acceptance of such small premium policies as a designated insurer for the balance of that year.

(d) An insurer which has not met the premium eligibility test set forth in Subsection (b) of this section may apply to the board for appointment as a designated insurer. If it is shown that such insurer meets the qualifications established by the board, it may be appointed.

(e) A designated insurer may contract with other appropriately licensed entities to provide all services necessary for small premium policies.

Sec. 3.03. SMALL PREMIUM POLICY PLAN COSTS. (a) The facility shall pay all costs and expenses of operating and maintaining the plan, and funds of this state shall not be appropriated or expended for payment of any costs or expenses incurred in its operation.

(b) From funds received through the plan from reinsurance transactions, the facility shall set up and maintain reserves in accordance with rules approved by the board.

Sec. 3.04. REINSURANCE. Insurance companies are hereby authorized to establish a voluntary pool for the purpose of providing catastrophic insurance coverage for small premium policies written pursuant to this part.

Sec. 3.05. CREATION OF REINSURANCE ACCOUNT; ACCEPTANCE OF CEDED INSURANCE ON SMALL PREMIUM POLICIES. (a) The board may authorize the establishment within the facility of a separate account to be known as the reinsurance account or may authorize a separate facility for small premium policies. Through this reinsurance account, the facility may accept ceded reinsurance of small premium policies from designated insurers. The reinsurance account shall be available to and shall accept reinsurance of small premium policies.

(b) Upon accepting such reinsurance the facility shall pay, as ceding commission, a portion of the premium applicable to such policy in a uniform amount determined from time to time by the board. The amount of the ceding commission shall be sufficient to reimburse the designated insurer for premium tax, maintenance taxes, general overhead expenses, loss adjustment expenses, agents' commissions, and other acquisition expenses provided that the amount of the ceding commission does not exceed the level granted to voluntary market writings for such expenses in the most recent workers' compensation rate decision.

(c) The facility must be notified that the small premium policy is to be ceded within 30 days from the date coverage under the policy becomes effective.

(d) Services on a reinsured policy will be provided by the designated insurer and retained for its own account. Settlements on reinsured transactions shall be made quarterly between the designated insurer and the facility.

Sec. 3.06. SMALL PREMIUM POLICY PLAN REINSURANCE DEFICIT. Premiums and losses of small premium policies reinsured through the plan shall be accounted for in accordance with procedures applicable to the facility approved by the board.

PART 4. TEXAS WORKERS' COMPENSATION EMPLOYERS' REJECTED RISK FUND

Sec. 4.01. PURPOSE. The employers' rejected risk fund shall provide insurance coverages for employers in this state who are unable to secure insurance in the voluntary market and are ineligible for coverage through the employers' small premium policy plan as provided for in this article.

Sec. 4.02. DUTIES, FUNCTIONS OF THE FUND. (a) The fund shall provide insurance, in the manner herein provided, for any risk, other than an employer eligible for coverage as a small premium policy, which risk shall have been tendered to and rejected in writing by any two members of the facility, not of the same insurance group. After the rules adopted under Section 2.04 of this article have been approved by the board, the procedures established under this article shall be the exclusive procedure of any applicant for such insurance whose insurance has been rejected or canceled by any member.

(b) When any rejected risk applies for coverage from the facility and it appears that said risk is in good faith entitled to insurance through the fund, the facility shall calculate the deposit premium therefor in accordance with the classifications and rates promulgated by the board and, on payment thereof, the facility shall designate a servicing company whose duty it shall be to issue a policy on such form and for such limits of liability as shall be prescribed by the board, but the undertaking of said policy shall be entirely reinsured by all members of the facility, and the liability of the servicing company issuing said policy shall be limited to its liability as a reinsurer. A servicing company that is not a member of the facility is not liable as a reinsurer. On all such policies all members of the facility shall be reinsurers as among themselves in proportion to the amount which the premiums of such insurance written in this state during the preceding calendar year by such member bear to the total of such premiums written in this state during the preceding calendar year by all members of the facility, and each said policy may be endorsed to reflect the plan of reinsurance hereinabove provided.

Sec. 4.03. FUND COSTS. The facility shall pay all costs and expenses of operating and maintaining the fund, including all fees to members and other eligible entities for servicing rejected risks. Funds of this state shall not be appropriated or expended for payment of any costs or expenses incurred in the operation or maintenance of the fund.

Sec. 4.04. FACILITY DEFICITS. (a) The facility shall annually report its operating results to the board. In the event there is a deficit from operations, the amount of such deficit shall be assessed on the members based on the proportion to the amount that a member company's voluntary workers' compensation insurance writings bear to the total voluntary workers' compensation insurance writings in this state for the preceding calendar year.

(b) The board may by rule provide for a maximum annual assessment for the facility deficit assessed against a member company under Subsection (a) of this section and may provide that the payment of any portion of the assessment not met because of such maximum is deferred from year to year.

(c) The rules shall require consideration of the financial stability of the fund and the member company when setting a maximum and allowing deferments under Subsection (b) of this section.

(d) A designated insurer may not cede more than 50 percent of its total writings of premium from risks eligible for a small premium policy. One-half of that portion of written premiums from risks eligible for small premium policies which is not ceded to the reinsurance account shall be removed from a member company's voluntary writings when calculating the assessment ratio of that member company as set out in Subsection (a) of this section.

(e) Commencing January 1, 1992, every member insurer which elects to defer any portion of an assessed deficit as provided herein must show the entire unpaid, assessed portion thereof as a liability on all of its financial and annual statements.

Sec. 4.05. FUND RATES. (a) The board, in addition to the provisions prescribed by Subchapter D, Chapter 5, Insurance Code, is authorized and directed to determine, fix, prescribe, promulgate, change, or amend endorsements, rates, rating plans, or minimum premiums normally applicable to a risk so as to apply to any and every rejected risk assigned by the facility such endorsements, rates, rating plans, and minimum premiums as are commensurate with the greater hazard of the rejected risk, considering in connection therewith the experience and physical, financial, and other conditions of such risk.

(b) In promulgating a rate or rates for rejected risks assigned by the facility, the board shall give due consideration to an appropriate allowance for the greater hazard of the risks' losses, claims expense, audit expenses, premium taxes, maintenance taxes, general administration expense, agent's commissions, other acquisition expense, inspection expense, an allowance for profit or contingencies, and any other relevant facts in connection with insuring and servicing such rejected risks.

(c) The board shall establish a surcharge program for risks insured by the fund for the purposes of encouraging safety and funding any deficit caused by excessive losses. The surcharge program shall include provisions that if an individual insured's actual losses are equal to or less than the insured's modified expected losses, as determined under the Texas workers' compensation experience rating plan, then there is to be no surcharge. The maximum surcharge shall be 100 percent of standard premiums and shall be related to the difference between each insured's actual losses and its modified expected losses.

(d) The board shall promulgate a special form of all states endorsement, in keeping with the purposes of this article, which may be used in connection with any risk insured by the fund, and shall establish premiums for the use of such endorsement.

(e) The board may establish a separate rating plan for those employers who apply for workers' compensation insurance in the facility and are either certified self-insurers or members of a certified self-insurer group.

Sec. 4.06. INJURY PREVENTION REQUIREMENTS. (a) The facility or any of its members may make and enforce reasonable rules for the prevention of injuries to employees of its policyholders or applicants for insurance under this article. For this purpose, representatives of the facility, any of its members, or representatives of the board shall be granted free access to the premises of each such policyholder or applicant during regular working hours.

(b) Failure or refusal by any such policyholder or applicant to comply with any reasonable rule prescribed by the facility for the prevention of injuries or failure or refusal to make full disclosure of all information pertinent to the insuring or servicing of the policyholder or applicant shall be sufficient grounds for the facility to cancel a policy or deny an application for insurance.

Sec. 4.07. DISCLOSURE BY REJECTED RISKS. (a) Any rejected risk shall make full disclosure to the facility of information concerning its true ownership, change of ownership, operations, or payroll and any of its records pertaining to workers' compensation insurance.

(b) The facility shall adopt rules to implement this section.

Sec. 4.08. SERVICING COMPANIES. (a) The board shall establish standards, qualifications, requirements, and all other particulars regarding servicing companies necessary to service the fund adequately. The board shall establish practices, policies, and procedures for the selection of servicing companies on a competitive basis. The board shall solicit proposals for an appropriate number of

servicing contracts, as determined by the board, from members and other eligible entities to act as servicing companies. Proposals shall be publicly opened by the board. The board shall evaluate each proposal and award a servicing contract to the appropriate number of members or entities whose proposals conform with the solicitation and, in the judgment of the board, are most advantageous to the fund; provided that the board gives full consideration to economies of scale to be achieved by limiting the number of servicing companies. The board shall consider the fee bid by each member or entity, as well as other factors, in making the contract awards. Each servicing company selected shall receive the fee that it bid.

(b) Any entity desiring to be a servicing company shall submit a proposal to the board pursuant to the solicitation process described by Subsection (a) of this section. Among the other requirements specified by the board, the proposal shall provide satisfactory evidence that such applicant possesses the demonstrated records of competence, financial stability, and resources sufficient to assure the board that it is able to provide all services required by the board, including the following:

(1) investigating, reporting, and paying claims;

(2) complying with requirements of the Texas Workers' Compensation Commission;

(3) conducting safety inspections and presenting loss prevention programs or courses of instruction at the insured's office or work location;

(4) inspecting risks for classification purposes;

(5) promptly issuing policies, endorsements, and certificates of insurance;

(6) making and preparing final payroll audits;

(7) preparing for litigation, litigating, and conducting legal support required under the policy contract;

(8) preparation and timely submission of all appropriate financial and statistical reports; and

(9) all other services required for servicing workers' compensation policies in all particulars throughout this state.

(c) An entity that is not a member but that desires to be a servicing company shall submit a proposal to the board to be a servicing company pursuant to the solicitation process prescribed by Subsections (a) and (b) of this section. An entity that is not an insurer is not required to hold a license under this code to perform the functions of a servicing company. If an unlicensed entity is selected by the board to be a servicing carrier, the board may require a fidelity bond, surety bond, and/or other financial security of such an entity. An entity appointed under this subsection shall be subject to the provisions of Articles 21.21 and 21.21-2 of this code.

(d) The performance of servicing companies shall be subject to the continuing jurisdiction of the board.

(e) The board shall develop a fair and nondiscriminatory plan for assignments to servicing companies.

(f) The board shall promulgate and adopt rules to implement this section. Such rules shall be distributed to all member companies, and to other entities upon request.

PART 5. MARKET ASSISTANCE PROGRAM

Sec. 5.01. MARKET ASSISTANCE PROGRAM. The board shall establish a voluntary market assistance program to monitor the operation of the fund with the object of reducing the number of risks insured by the fund. Pursuant to such program each rejected risk meeting qualifications set forth by the board and making a request shall be reviewed before or after its assignment under Section 4.02 of this article. The market assistance program shall attempt to find an insurer to voluntarily insure the risk before its initial assignment to the fund, assignment to a specific

company under Section 4.02 of this article, or renewal of the risk's assignment to the fund. The board shall adopt rules as necessary to implement this section. A licensed local recording agent need not be appointed by an insurer willing to accept business offered by the agent for review by the market assistance program. The market assistance program may establish reasonable fees for market assistance review, and those fees are dedicated to the board for the administration of this section.

(b) Subsection (b), Section 2, Article 1.14-1, Insurance Code, is amended to read as follows:

(b) The provisions of this section do not apply to:

1. The lawful transaction of surplus lines insurance.

2. The lawful transaction of reinsurance by insurers.

3. Transactions in this state involving a policy lawfully solicited, written, and delivered outside of this state covering only subjects of insurance not resident, located, or expressly to be performed in this state at the time of issuance, and which transactions are subsequent to the issuance of such policy.

4. Transactions involving contracts of insurance independently procured through negotiations occurring entirely outside of this state which are reported and on which premium tax is paid in accordance with this Article.

5. Transactions in this state involving group life, health or accident insurance (other than credit insurance) and group annuities where the master policy of such groups was lawfully issued and delivered in a state in which the company was authorized to do an insurance business and such transactions are authorized by other statutes of this state.

6. Lawful transactions by servicing companies of the Texas workers' compensation employers' rejected risk fund pursuant to Section 4.08, Article 5.76-2.

ARTICLE 14. PENALTY FOR FRAUDULENTLY OBTAINING OR DENYING WORKERS' COMPENSATION BENEFITS

SECTION 14.01. Subchapter D, Chapter 32, Penal Code, is amended by adding Section 32.51 to read as follows:

Sec. 32.51. PENALTY FOR FRAUDULENTLY OBTAINING OR DENYING WORKERS' COMPENSATION BENEFITS. (a) A person commits an offense if the person, with intent to obtain or deny payments of workers' compensation benefits under the workers' compensation laws of this state for himself or another, knowingly or intentionally:

(1) makes a false or misleading statement;

(2) misrepresents or conceals a material fact; or

(3) fabricates, alters, conceals, or destroys a document other than a governmental record.

(b) A person commits an offense if the person receives workers' compensation benefits that the person knows he is not legally entitled to receive.

(c) An offense under Subsection (a) of this section is a Class A misdemeanor. An offense under Subsection (b) of this section is:

(1) a Class A misdemeanor if the value of the benefits received is less than $750;

(2) a felony of the third degree if the value of the benefits received is $750 or more but less than $10,000; and

(3) a felony of the second degree if the value of the benefits received is $10,000 or more.

ARTICLE 15. CONFORMING AMENDMENTS

SECTION 15.01. Section 23.101(a), Government Code, as amended by Chapters 614, 739, and 755, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(a) The trial courts of this state shall regularly and frequently set hearings and trials of pending matters, giving preference to hearings and trials of the following:

(1) temporary injunctions;

(2) criminal actions, with criminal actions against defendants who are detained in jail pending trial given preference over other criminal actions;

(3) election contests and suits under the Election Code;

(4) orders for the protection of the family under Section 3.581, 71.11, or 71.12, Family Code; [~~and~~]

(5) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~] and claims under the Federal Employers' Liability Act and the Jones Act; and

(6) [~~(5)~~] suits for declaratory judgment under Section 89.085, Natural Resources Code.

SECTION 15.02. Section 25.0032(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Anderson County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts;

(2) concurrent jurisdiction with the district court in:

(A) probate matters and proceedings, including will contests;

(B) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest;

(C) family law cases and proceedings; and

(D) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy; and

(3) concurrent jurisdiction with the county and district courts over all suits arising under the Family Code.

SECTION 15.03. Section 25.0222(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a statutory county court in Brazoria County has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds $500 but does not exceed $50,000, excluding interest;

(2) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy; and

(3) family law cases and proceedings.

SECTION 15.04. Section 25.0592(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Dallas County has original and concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds $500, excluding interest, but does not exceed $50,000, excluding interest, statutory damages and penalties, attorney's fees, and costs; and

(2) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy.

SECTION 15.05. Section 25.0702(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Ector County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest;

(B) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy; and

(C) family law cases and proceedings.

SECTION 15.06. Section 25.0862(b), Government Code, is amended to read as follows:

(b) A statutory county court has concurrent jurisdiction with the district court in:

(1) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest;

(2) family law cases and proceedings; and

(3) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy.

SECTION 15.07. Section 25.1032(b), Government Code, as amended by Chapters 2 and 445, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(b) In addition to other jurisdiction provided by law, a county civil court at law has:

(1) concurrent jurisdiction with the district court in civil cases in which the matter in controversy exceeds $500, excluding interest, and does not exceed $100,000, excluding interest, statutory or punitive damages and penalties, attorney's fees, and costs; and

(2) original and concurrent jurisdiction with the district court in appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy.

SECTION 15.08. Section 25.1072(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Hays County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the matter in controversy exceeds $500 and does not exceed $50,000, excluding interest;

(B) family law cases and proceedings; and

(C) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy.

SECTION 15.09. Section 25.1092(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Henderson County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest, court costs, and attorney's fees in cases in which attorney's fees are taxed as costs of court;

(B) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy; and

(C) family law cases and proceedings.

SECTION 15.10. Section 25.1182(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Hunt County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest; and

(B) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~].

SECTION 15.11. Section 25.1482(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Liberty County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest and attorney's fees;

(B) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~]; and

(C) family law cases and proceedings.

SECTION 15.12. Section 25.1542(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Lubbock County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest;

(B) family law cases and proceedings; and

(C) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy.

SECTION 15.13. Section 25.1672(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Midland County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the matter in controversy exceeds $500 but does not exceed $50,000, excluding interest;

(B) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy; and

(C) family law cases and proceedings.

SECTION 15.14. Section 25.1732(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Moore County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent civil jurisdiction with the district court in:

(A) cases in which the matter in controversy exceeds $500 and does not exceed $50,000, excluding interest and attorney's fees;

(B) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~]; and

(C) family law cases and proceedings.

SECTION 15.15. Section 25.1792(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Nolan County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) cases in which the amount in controversy exceeds $500, but does not exceed $50,000, excluding interest;

(B) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy; and

(C) family law cases and proceedings.

SECTION 15.16. Section 25.1852(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Panola County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the matter in controversy exceeds $500, but does not exceed $50,000, excluding interest;

(B) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy; and

(C) family law cases and proceedings.

SECTION 15.17. Section 25.1862(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Parker County has concurrent jurisdiction with the district court in:

(1) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest and attorney's fees;

(2) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy; and

(3) family law cases and proceedings.

SECTION 15.18. Section 25.1892(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Polk County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent civil jurisdiction with the district court in:

(A) cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest and attorney's fees;

(B) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy;

(C) cases and proceedings involving the collection of delinquent taxes, penalties, interest, and costs and the foreclosure of tax liens; and

(D) family law cases and proceedings.

SECTION 15.19. Section 25.1902(b), Government Code, is amended to read as follows:

(b) The County Court at Law No. 2 of Potter County also has, concurrent with the county court, the probate jurisdiction provided by general law for county courts. A county court at law also has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds $500 but does not exceed $50,000, excluding interest;

(2) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy; and

(3) family law cases and proceedings.

SECTION 15.20. Section 25.2032(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Rusk County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the matter in controversy exceeds $500 but does not exceed $50,000, excluding interest;

(B) family law cases and proceedings; and

(C) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy.

SECTION 15.21. Section 25.2142(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Smith County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest, statutory damages and penalties, attorney's fees, and costs;

(B) family law cases and proceedings; and

(C) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy.

SECTION 15.22. Section 25.2162(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Starr County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 and does not exceed $100,000, excluding interest and attorney's fees;

(B) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~];

(C) family law cases and proceedings; and

(D) controversies involving title to real property.

SECTION 15.23. Section 25.2222(b), Government Code, is amended to read as follows:

(b) A county court at law has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds $500 and does not exceed $50,000, excluding mandatory damages and penalties, attorney's fees, interest, and costs;

(2) nonjury family law cases and proceedings; and

(3) final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amounts in controversy.

SECTION 15.24. Section 25.2292(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Travis County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts;

(2) concurrent jurisdiction with the district courts in civil cases and proceedings in which the amount in controversy exceeds $500, but does not exceed $50,000, excluding interest; and

(3) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy.

SECTION 15.25. Section 25.2412(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Washington County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the amount in controversy exceeds $500 but does not exceed $50,000, excluding interest;

(B) family law cases and proceedings; and

(C) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy.

SECTION 15.26. Section 25.2422(a), Government Code, as amended by Chapters 2 and 944, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Webb County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts; and

(2) concurrent jurisdiction with the district court in:

(A) civil cases in which the matter in controversy exceeds $500 and does not exceed $50,000, excluding interest;

(B) family law cases and proceedings;

(C) cases and proceedings involving justiciable controversies and differences between spouses, or between parents, or between parent and child, or between any of these and third persons;

(D) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy; and

(E) proceedings to expunge a criminal arrest record under Chapter 55, Code of Criminal Procedure.

SECTION 15.27. Section 25.2452(d), Government Code, is amended to read as follows:

(d) A county court at law has concurrent jurisdiction with the district court in:

(1) civil cases in which the amount in controversy exceeds $500 but does not exceed $50,000, excluding interest;

(2) family law cases and proceedings;

(3) suits brought under the authority of the Revised Uniform Reciprocal Enforcement of Support Act (Section 21.01 et seq., Family Code) or the Uniform Interstate Compact on Juveniles (Section 25.01 et seq., Family Code);

(4) other juvenile and child welfare cases in which the district and county courts have jurisdiction; and

(5) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy.

SECTION 15.28. Section 25.2482(a), Government Code, is amended to read as follows:

(a) In addition to the jurisdiction provided by Section 25.0003 and other law, a county court at law in Williamson County has:

(1) concurrent with the county court, the probate jurisdiction provided by general law for county courts;

(2) concurrent jurisdiction with the district court in cases in which the amount in controversy exceeds $500 and does not exceed $50,000, excluding interest;

(3) family law cases and proceedings; and

(4) appeals of final rulings and decisions of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], regardless of the amount in controversy.

SECTION 15.29. Article 1.07, Insurance Code, is amended to read as follows:

Art. 1.07. TEXAS WORKERS' COMPENSATION COMMISSION [~~INDUSTRIAL ACCIDENT BOARD~~]. Nothing in this Code shall be construed to in any manner affect the duties [~~now~~] imposed by law on the Texas Workers' Compensation Commission [~~Industrial Accident Board~~] or to take from said commission [~~board~~] the performance of the duties [~~now~~] imposed on said commission [~~board~~] by law.

SECTION 15.30. Section 3A, Article 21.28, Insurance Code, is amended to read as follows:

Sec. 3A. WORKERS' COMPENSATION CARRIER: NOTIFICATION OF TEXAS WORKERS' COMPENSATION COMMISSION [~~INDUSTRIAL ACCIDENT BOARD~~]. (a) The liquidator shall notify the Texas Workers' Compensation Commission [~~Industrial Accident Board~~] immediately upon a finding of insolvency or impairment upon any insurance company which has in force any workers' compensation coverage in Texas.

(b) The Texas Workers' Compensation Commission [~~Industrial Accident Board~~] shall, upon said notice, submit to the liquidator a list of active cases pending before the Texas Workers' Compensation Commission [~~Industrial Accident Board~~] in which there has been an acceptance of liability by the carrier, where it appears that no bona fide dispute exists and where payments were commenced prior to the finding of insolvency or impairment and where future or past indemnity or medical payments are due.

(c) Notwithstanding the provisions of Section 3 of this Article, the liquidator is authorized to commence or continue the payment of claims based upon the list submitted in Subsection (b) above.

(d) In order to avoid undue delay in the payment of covered workers' compensation claims, the liquidator shall contract with the Texas Workers' Compensation [~~Assigned Risk~~] Pool or any other qualified organization for claims adjusting. Files and information delivered by the Texas Workers' Compensation Commission [~~Industrial Accident Board~~] to the liquidator may be delivered to the Texas Workers' Compensation [~~Assigned Risk~~] Pool or any organization with which the liquidator has contracted for claims adjusting services.

(e) The Texas Workers' Compensation Commission [~~Industrial Accident Board~~] shall report to the State Board of Insurance any occasion when a workers' compensation insurer has committed acts that may indicate insurer financial impairment, delinquency or insolvency.

SECTION 15.31. Section 2(5)(A), Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes), is amended to read as follows:

(A) "Appointed officer of a major state agency" means any of the following:

(i) a member of the Public Utility Commission of Texas;

(ii) a member of the Texas Department of Commerce;

(iii) a member of the Texas Board of Aviation;

(iv) a member of the Texas Air Control Board;

(v) a member of the Texas Alcoholic Beverage Commission;

(vi) a member of the Finance Commission of Texas;

(vii) a member of the State Purchasing and General Services Commission;

(viii) a member of the Texas Board of Criminal Justice [~~Corrections~~];

(ix) a member of the Board of Trustees of the Employees Retirement System of Texas;

(x) a member of the State Highway and Public Transportation Commission;

(xi) a member of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~];

(xii) a member of the State Board of Insurance;

(xiii) [~~a member of the Board of Pardons and Paroles;~~]

[~~(xiv)~~] a member of the Parks and Wildlife Commission;

(xiv) [~~(xv)~~] a member of the Public Safety Commission;

(xv) [~~(xvi)~~] the Secretary of State;

(xvi) [~~(xvii)~~] a member of the State Securities Board;

(xvii) [~~(xviii)~~] a member of the Texas Amusement Machine Commission;

(xviii) [~~(xix)~~] a member of the Texas Water Development Board;

(xix) [~~(xx)~~] a member of the Texas Water Commission;

(xx) [~~(xxi)~~] a member of the governing board of a state senior college or university as defined by Section 61.003, Education Code;

(xxi) [~~(xxii)~~] a member of the Texas Higher Education Coordinating Board;

(xxii) [~~(xxiii)~~] a member of the Texas Employment Commission;

(xxiii) [~~(xxiv)~~] a member of the State Banking Board;

(xxiv) [~~(xxv)~~] a member of the board of trustees of the Teachers Retirement System of Texas;

(xxv) [~~(xxvi)~~] a member of the Credit Union Commission; or

(xxvi) [~~(xxvii)~~] a member of the School Land Board.

SECTION 15.32. Section 3(1), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) "Agency" means any state board, commission, department, or officer having statewide jurisdiction, other than an agency wholly financed by federal funds, the legislature, the courts, the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], and institutions of higher education, that makes rules or determines contested cases.

SECTION 15.33. Section 2(1), Texas Administrative Code Act (Article 6252-13b, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) "Agency" means any state board, commission, department, or officer having statewide jurisdiction, other than an agency wholly financed by federal funds, the legislature, the courts, the Texas Workers' Compensation Commission [~~Industrial Accident Board~~], and institutions of higher education, that makes rules or determines contested cases.

SECTION 15.34. Section 3A(h), Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), is amended to read as follows:

(h) Notice of a meeting must be posted in a place readily accessible to the general public at all times for at least 72 hours preceding the scheduled time of the meeting, except that notice of a meeting of a state board, commission, department, or officer having statewide jurisdiction, other than the Texas Workers' Compensation Commission [~~Industrial Accident Board~~] or the governing board of an institution of higher education, must be posted by the Secretary of State for at least seven days preceding the day of the meeting. In case of emergency or urgent public necessity, which shall be clearly identified in the notice, it shall be sufficient if the notice is posted two hours before the meeting is convened. Any public official or person who is designated or authorized to post notices of meetings by a governmental body in accordance with Section 3A of this Act shall post the notice

taking at face value the reason for the emergency as stated by the governmental body. Cases of emergency and urgent public necessity are limited to imminent threats to public health and safety or reasonably unforeseeable situations requiring immediate action by the governmental body. Provided further, that where a meeting has been called with notice thereof posted in accordance with this subsection, additional subjects may be added to the agenda for such meeting by posting a supplemental notice, in which the emergency or urgent public necessity requiring consideration of such additional subjects is expressed. In the event of an emergency meeting, or in the event any subject is added to the agenda in a supplemental notice posted for a meeting other than an emergency meeting, it shall be sufficient if the notice or supplemental notice is posted two hours before the meeting is convened, and the presiding officer or the member calling such emergency meeting or posting supplemental notice to the agenda for any other meeting shall, if request therefor containing all pertinent information has previously been filed at the headquarters of the governmental body, give notice by telephone or telegraph to any news media requesting such notice and consenting to pay any and all expenses incurred by the governmental body in providing such special notice. The notice provisions for legislative committee meetings shall be as provided by the rules of the house and senate.

SECTION 15.35. Section 2, Chapter 502, Acts of the 45th Legislature, Regular Session, 1937 (Article 6674s, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. (a) The following words and phrases as used in this law shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

(1) [~~1.~~] "Department" whenever used in this law means [~~shall be held to mean~~] the State [~~Highway~~] Department of Highways and Public Transportation [~~Texas~~].

(2) [~~2.~~] "Employee" means [~~shall mean~~] every person in the service of the [~~State Highway~~] Department under any appointment or expressed contract of hire, oral or written, whose name appears upon the payroll of the [~~State Highway~~] Department.

(3) [~~3.~~] "Insurance" means workers' compensation insurance [~~shall mean Workmen's Compensation Insurance~~].

(4) [~~4.~~] "Board" means the Texas Workers' Compensation Commission [~~shall mean the Industrial Accident Board of the State of Texas~~].

(5) [~~5.~~] "Legal beneficiaries" means the legal beneficiaries recognized under the Texas Workers' Compensation Act (S.B. No. 1, Acts of the 71st Legislature, 2nd Called Session, 1989) [~~shall mean the relatives named in Section 8a of Article 8306, Revised Civil Statutes of Texas of 1925, adopted in Section 7 of this law~~].

(6) [~~6.~~] "Average weekly wages" has the meaning assigned by the Texas Workers' Compensation Act (S.B. No. 1, Acts of the 71st Legislature, 2nd Called Session, 1989) [~~shall be as defined in Section 1, Article 8309, Revised Civil Statutes of Texas of 1925~~].

(b) [~~8.~~] Any reference to an employee herein who has been injured shall, when the employee is dead, also include the legal beneficiaries, as that term is herein used, of such employee to whom compensation may be payable. Whenever in this law the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and neuter shall be included.

SECTION 15.36. Section 7, Chapter 502, Acts of the 45th Legislature, Regular Session, 1937 (Article 6674s, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7. (a) The following provisions of the Texas Workers' Compensation Act (S.B. No. 1, Acts of the 71st Legislature, 2nd Called Session, 1989) [~~laws as amended or as they may hereafter be amended~~] are adopted except to the extent that they are inconsistent with this Act:

(1) Article 1, except the definition of "employee" under Section 1.03;

(2) Article 2, except Sections 2.21 through 2.25;

(3) Chapter A of Article 3, except Sections 3.05, 3.06, 3.14 through 3.17, and 3.19;

(4) Article 4, except Section 4.01(b); and

(5) Articles 5 through 10, except Sections 7.02 through 7.09 [~~Article 8306, except Sections 5 and 28, and Articles 8307, 8307b, and 8309, Revised Civil Statutes of Texas, 1925, as amended;~~

[~~(2) Chapter 248, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 8306a, Vernon's Texas Civil Statutes);~~

[~~(3) Chapter 77, Acts of the 65th Legislature, Regular Session, 1977 (Article 8306b, Vernon's Texas Civil Statutes);~~

[~~(4) Chapter 208, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 8307a, Vernon's Texas Civil Statutes);~~

[~~(5) Chapter 115, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8307c, Vernon's Texas Civil Statutes);~~

[~~(6) Chapter 358, Acts of the 64th Legislature, 1975 (Article 8307d, Vernon's Texas Civil Statutes); and~~

[~~(7) Chapter 179, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 8309a, Vernon's Texas Civil Statutes)~~].

(b) Chapter 115, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8307c, Vernon's Texas Civil Statutes), is adopted except to the extent it is inconsistent with this article.

(c) Nothing in this Act or the Texas Workers' Compensation Act (S.B. No. 1, Acts of the 71st Legislature, 2nd Called Session, 1989) shall be construed to authorize causes of action or damages against the department or any employee thereof beyond the actions and damages authorized by the Texas Tort Claims Act (Chapter 101, Civil Practice and Remedies Code).

(d) Provided that whenever in the above adopted law [~~laws~~] the word [~~words "association," "subscriber," or~~] "employer" appears [~~or their equivalents appear~~], it [~~they~~] shall be construed to and shall mean "the department."

SECTION 15.37. Section 14, Chapter 502, Acts of the 45th Legislature, Regular Session, 1937 (Article 6674s, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 14. The [~~State Highway~~] Department is authorized to promulgate and publish such rules and regulations and to prescribe and furnish such forms as may be necessary to the effective administration of this law, and the [~~State Highway~~] Department shall have authority to make and enforce such rules for the prevention of accidents and injuries as may be deemed necessary. It shall be the duty of the [~~State Highway~~] Department to designate a convenient number of regularly licensed practicing physicians and surgeons for the purpose of making physical examinations of all persons employed or to be employed in the service of the [~~State Highway~~] Department to determine who may be physically fit to be classified as "employees" as that term is defined in [~~Subsection 2 of~~] Section 2(a)(2) of this Act, and said physicians and surgeons so designated and so conducting such examinations shall make and file with the [~~State Highway~~] Department a complete transcript of said examination in writing upon a form to be furnished by the [~~State Highway~~] Department. It shall be the duty of the [~~State Highway~~] Department to preserve as a part of the permanent records of the [~~State Highway~~] Department all reports of such examinations so filed. Such reports shall be admissible in evidence before the

Texas Workers' Compensation Commission [~~Industrial Accident Board~~], and in any court of competent jurisdiction to which an appeal has been made from a final award or ruling of the Texas Workers' Compensation Commission [~~Industrial Accident Board~~] in which the person named in said examination is a claimant for compensation benefits under the terms and provisions of this Act, and such reports so admitted shall be prima facie evidence as to the facts set out therein.

SECTION 15.38. Sections 2, 7, 9, and 13, Chapter 229, Acts of the 50th Legislature, 1947 (Article 8309b, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 2. (a) The following words and phrases as used in this Act shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

(1) [~~1.~~] "Institution" whenever used in this Act means [~~shall be held to mean~~] each of the institutions and agencies under the direction or governance of the Board of Regents of The Texas A&M University System.

(2) [~~2.~~] "Workman" means [~~shall mean~~] every person employed in the service of any institution as defined above, whose name appears on the payroll thereof.

(3) [~~3.~~] "Insurance" means workers' compensation insurance [~~shall mean Workmen's Compensation Insurance~~].

(4) [~~4.~~] "Board" means the Texas Workers' Compensation Commission [~~shall mean the Industrial Accident Board of the State of Texas~~].

(5) [~~5.~~] "Legal beneficiaries" means the legal beneficiaries recognized under the Texas Workers' Compensation Act (S.B. No. 1, Acts of the 71st Legislature, 2nd Called Session, 1989) [~~shall mean the relatives named in Section 8a of Article 8306, Revised Civil Statutes of Texas of 1925, adopted in Section 7 of this Act~~].

(6) [~~6.~~] "Average weekly wages" has the meaning assigned by the Texas Workers' Compensation Act (S.B. No. 1, Acts of the 71st Legislature, 2nd Called Session, 1989) [~~shall be as defined in Section 1, Article 8309, Revised Civil Statutes of Texas of 1925~~].

(b) [~~8.~~] Any reference to a workman herein who has been injured shall, when the workman is dead, also include the legal beneficiaries, as that term is herein used, of such workmen to whom compensation may be payable. Whenever in this Act the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and neuter shall be included.

Sec. 7. (a) Unless otherwise provided in this Act, the following provisions of the Texas Workers' Compensation Act (S.B. No. 1, Acts of the 71st Legislature, 2nd Called Session, 1989) [~~herein, Sections 1, 6, 7, 7b, 7c, 7d, 7e, 8, 8a, 8b, 9, 10, 11, 11a, 12, 12a, 12b, 12c, 12d, 12e, 12f, 12i, 13, 15, 15a, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, and 27 of Article 8306, Revised Civil Statutes of Texas, 1925, as amended, and Article 8306a, Acts 1931, 42nd Legislature, as amended, and Sections 4a, 6a, 11, 12, 13, and 14 of Article 8307, of the Revised Civil Statutes of Texas, 1925, as amended, and Sections 4, and 5, of Article 8309, of the Revised Civil Statutes of Texas, 1925, as amended;~~] are hereby adopted and shall govern except to the extent they are inconsistent with this Act:

(1) Article 1, except the definition of "employee" under Section 1.03;

(2) Article 2, except Sections 2.21 through 2.25;

(3) Chapter A of Article 3, except Sections 3.05 through 3.10;

(4) Article 4, except Section 4.01(b); and

(5) Articles 5 through 10, except Sections 7.02 through 7.09 [~~insofar as applicable under the provisions of this law~~].

(b) Nothing in this Act or the Texas Workers' Compensation Act (S.B. No. 1, Acts of the 71st Legislature, 2nd Called Session, 1989) shall be construed to

authorize causes of action or damages against The Texas A&M University System, an institution, or their employees beyond the actions and damages authorized by the Texas Tort Claims Act (Chapter 101, Civil Practice and Remedies Code).

(c) Provided that whenever [~~in the above adopted Sections of Articles 8306, 8307, and 8309 of the Revised Civil Statutes of Texas, 1925, as amended, or herein amended,~~] the word "employer" appears in this Act, it means [~~"association," "subscriber," or "employer," or their equivalents appear in such Articles, they shall be construed to and shall mean~~] "the institution."

Sec. 9. It is the purpose of this Act that the compensation herein provided for shall be paid from week to week and as it accrues and directly to the person entitled thereto, unless the liability is redeemed as in such cases provided elsewhere herein; except that the institution may provide that an injured workman may remain on the payroll until his earned annual and sick leave is exhausted, during which time medical [~~the~~] services [~~provided in Section 7, Article 8306, as amended,~~] will remain available to the workman but no workmen's compensation payment will accrue or become due and payable to the injured workman.

Sec. 13. The institution is authorized to promulgate and publish such rules and regulations and to prescribe and furnish such forms as may be necessary to the effective administration of this Act, and the institution shall have authority to make and enforce such rules for the prevention of accidents and injuries as may be deemed necessary. The institution may obtain and record, on a form and in a manner prescribed by the institution, the medical history of a person to be employed in the service of the institution. The institution may designate a convenient number of regularly licensed practicing physicians, surgeons and chiropractors for the purpose of making physical examinations of persons to be employed in the service of the institution to determine who may be physically fit to be classified as "workman" as that term is defined in [~~subsection 2 of~~] Section 2(a)(2) of this Act, and said physicians, surgeons and chiropractors so designated and so conducting such examinations shall make and file with the institution a complete transcript of said examination in writing and sworn to upon a form to be furnished by the institution. The institution, in a form and manner prescribed by the institution, shall preserve as a part of the permanent records of the institution all reports of all such examinations and medical histories so filed with it.

SECTION 15.39. Sections 2, 7, 9, 13, and 18, Chapter 310, Acts of the 52nd Legislature, 1951 (Article 8309d, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 2. (a) The following words and phrases as used in this Act shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

(1) [~~1.~~] "Institution" whenever used in this Act means [~~shall be held to mean~~] each of the institutions and agencies under the direction or government of the Board of Regents of The University of Texas System [~~including the following:~~

[~~Main University, Austin~~
[~~Medical Branch, Galveston~~
[~~Dental Branch, Houston~~
[~~M. D. Anderson Hospital for Cancer Research, Houston~~
[~~Southwestern Medical School, Dallas~~
[~~Texas Western College, El Paso~~
[~~Postgraduate School of Medicine, Houston~~
[~~Any other agencies now or hereafter under the direction and control of said Board of Regents~~].

(2) [~~2.~~] "Workman" means [~~shall mean~~] every person in the service of The University of Texas System under any appointment or expressed contract

of hire, oral or written, whose name appears upon the payroll of The University of Texas System.

(3) [~~3.~~] "Insurance" means workers' compensation insurance [~~shall mean Workmen's Compensation Insurance~~].

(4) [~~4.~~] "Board" means the Texas Workers' Compensation Commission [~~shall mean the Industrial Accident Board of the State of Texas~~].

(5) [~~5.~~] "Legal beneficiaries" means the legal beneficiaries recognized under the Texas Workers' Compensation Act (S.B. No. 1, Acts of the 71st Legislature, 2nd Called Session, 1989) [~~shall mean the relatives named in Section 8a of Article 8306, Revised Civil Statutes of Texas of 1925, adopted in Section 7 of this Act~~].

(6) [~~6.~~] "Average weekly wages" has the meaning assigned by the Texas Workers' Compensation Act (S.B. No. 1, Acts of the 71st Legislature, 2nd Called Session, 1989) [~~shall be as defined in Section 1, Article 8309, Revised Civil Statutes of Texas of 1925~~].

(b) [~~7.~~] Any reference to a workman herein who has been injured shall, when the workman is dead, also include the legal beneficiaries, as that term is herein used, of such workmen to whom compensation may be payable. Whenever in this Act the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and neuter shall be included.

Sec. 7. (a) The following provisions of the Texas Workers' Compensation Act (S.B. No. 1, Acts of the 71st Legislature, 2nd Called Session, 1989) [sections] are adopted and shall govern except to the extent they are inconsistent with [~~as applicable under the provisions of~~] this Act:

(1) Article 1, except the definition of "employee" under Section 1.03;

(2) Article 2, except Sections 2.21 through 2.25;

(3) Chapter A of Article 3, except Sections 3.05 through 3.10;

(4) Article 4, except Section 4.01(b); and

(5) Articles 5 through 10, except Sections 7.02 through 7.09 [~~Sections 1, 6, 7, 7b, 7c, 7d, 7e, 8, 8a, 8b, 9, 10, 11, 11a, 12, 12a, 12b, 12c, 12d, 12e, 12f, 12i, 13, 15, 15a, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, and 27 of Article 8306, Revised Civil Statutes of Texas, 1925, as amended, and as may be hereafter amended; Section 1, Chapter 248, Acts of the 42nd Legislature, Regular Session, 1931 (Article 8306a, Vernon's Texas Civil Statutes), as last amended by Section 2, Chapter 26, Acts of the 54th Legislature, Regular Session, 1955, and as may be hereafter amended; Sections 4a, 6a, 10, 11, 12, 13, and 14 of Article 8307, Revised Civil Statutes of Texas, 1925, as amended, and as may be hereafter amended; Sections 4 and 5, Article 8309, Revised Civil Statutes of Texas, 1925, as amended, and as may be hereafter amended; Section 1, Chapter 179, Acts of the 42nd Legislature, Regular Session, 1931 (Article 8309a, Vernon's Texas Civil Statutes), as amended by Section 7, Chapter 178, Acts of the 53rd Legislature, Regular Session, 1953, and as may be hereafter amended~~].

(b) Nothing in this Act or the Texas Workers' Compensation Act (S.B. No. 1, Acts of the 71st Legislature, 2nd Called Session, 1989) shall be construed to authorize causes of action or damages against The University of Texas System, an institution, or their employees beyond the actions and damages authorized by the Texas Tort Claims Act (Chapter 101, Civil Practice and Remedies Code).

(c) Wherever the word "employer" appears in the Texas Workers' Compensation Act (S.B. No. 1, Acts of the 71st Legislature, 2nd Called Session, 1989) [~~words "association," "subscriber," or "employer," or the equivalent of any of these words, are used in Article 8306, 8307, or 8309, Revised Civil Statutes of Texas, as amended, or as may be hereafter amended, and in Section 1, Chapter 179, Acts of the 42nd Legislature, Regular Session, 1931 (Article 8309a, Vernon's Texas Civil Statutes), as amended by Section 7, Chapter 178, Acts of the 53rd Legislature,~~

~~Regular Session, 1953, and as may be hereafter amended~~], for the purpose of this Act it means [~~they mean~~] "the institution."

Sec. 9. It is the purpose of this Act that compensation herein provided for shall be paid from week to week and as it accrues and directly to the person entitled thereto, unless the liability is redeemed as in such cases provided elsewhere herein; except that the institution may provide that an injured workman may remain on the payroll until his earned annual and sick leave is exhausted, during which time medical [~~the~~] services [~~in Section 7, Article 8306, Revised Civil Statutes of Texas, 1925, as amended, and as may be hereafter amended,~~] will remain available to the workman, but no workmen's compensation payment will accrue or become due and payable to the injured employee.

Sec. 13. The institution is authorized to promulgate and publish such rules and regulations and to prescribe and furnish such forms as may be necessary to the effective administration of this Act, and the institution shall have authority to make and enforce such rules for the prevention of accidents and injuries as may be deemed necessary. It shall be the duty of the institution to designate a convenient number of regularly licensed practicing physicians and surgeons for the purpose of making physical examinations of all persons employed or to be employed in the service of the institution to determine who may be physically fit to be classified as "workman" as that term is defined in [~~subsection 2 of~~] Section 2(a)(2) of this Act, and said physicians and surgeons so designated and so conducting such examinations shall make and file with the institution a complete transcript of said examination in writing and sworn to upon a form to be furnished by the institution. It shall be the duty of the institution to preserve as a part of the permanent records of the institution all reports of such examinations so filed with it.

Sec. 18. When an injured workman has sustained an injury in the course of employment and [~~filed claim for compensation and~~] given notice as required by law, the Board shall hear his claim for compensation within a reasonable time. Provided, however, when such injured workman is being paid compensation as provided in this Act, and the institution is furnishing either hospitalization or medical treatment to such workman, the Board may, within its discretion, delay or postpone the hearing of his claim, and no appeal shall be taken from any such order made by the Board.

SECTION 15.40. Subdivision (1), Section 3, Crime Victims Compensation Act (Article 8309-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) "Board" means the Texas Workers' Compensation Commission [~~Industrial Accident Board~~].

SECTION 15.41. The Crime Victims Compensation Act (Article 8309-1, Vernon's Texas Civil Statutes) is amended by adding Section 3a to read as follows:

Sec. 3a. Any powers, duties, and responsibilities given to the board in this Act are delegated to the executive director of the Texas Workers' Compensation Commission.

SECTION 15.42. Subsection (b), Article 1269t, Revised Statutes, is amended to read as follows:

(b) An employee who is exposed to a contagious disease is entitled to reimbursement from the employing governmental entity for reasonable medical expenses incurred in treatment for the prevention of the disease if:

(1) the disease is not an "ordinary disease of life" as that term is used in the context of a workers' compensation claim [~~by the Industrial Accident Board~~];

(2) the exposure to the disease occurs during the course of the employment; and

(3) the employee requires preventative medical treatment because of exposure to the disease.

SECTION 15.43. Subdivisions (3) and (4), Section 1, Article 8309g, Revised Statutes, are amended to read as follows:

(3) "Legal beneficiaries," "average weekly wages," and "injury sustained in the course of employment" have the meanings applied to those terms in the context of a workers' compensation claim brought under the Texas Workers' Compensation Act (S.B. No. 1, Acts of the 71st Legislature, 2nd Called Session, 1989) [~~meaning assigned to them in Section 1, Article 8309, Revised Civil Statutes of Texas, 1925, as amended~~].

(4) "Board" means the Texas Workers' Compensation Commission [~~Industrial Accident Board~~].

SECTION 15.44. Section 15, Article 8309g, Revised Statutes, is amended to read as follows:

Sec. 15. Adoption of General Workers' [~~Workmen's~~] Compensation Laws; Employer. (a) The following provisions of the Texas Workers' Compensation Act (S.B. No. 1, Acts of the 71st Legislature, 2nd Called Session, 1989) [~~laws as amended or as they may hereafter be amended~~] are adopted except to the extent that they are inconsistent with this Act:

(1) Article 1, except the definition of "employee" under Section 1.03;

(2) Article 2, except Sections 2.21 through 2.25;

(3) Chapter A of Article 3, except Sections 3.14 through 3.17 and 3.19;

(4) Article 4, except Section 4.01(b); and

(5) Articles 5 through 10, except Sections 7.02 through 7.09 [~~Article 8306, except Sections 5 and 28, and Articles 8307, 8307b, and 8309, Revised Civil Statutes of Texas, 1925, as amended;~~

[~~(2) Chapter 248, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 8306a, Vernon's Texas Civil Statutes);~~

[~~(3) Chapter 77, Acts of the 65th Legislature, Regular Session, 1977 (Article 8306b, Vernon's Texas Civil Statutes);~~

[~~(4) Chapter 208, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 8307a, Vernon's Texas Civil Statutes);~~

[~~(5) Chapter 115, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8307c, Vernon's Texas Civil Statutes);~~

[~~(6) Chapter 358, Acts of the 64th Legislature, 1975 (Article 8307d, Vernon's Texas Civil Statutes); and~~

[~~(7) Chapter 179, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 8309a, Vernon's Texas Civil Statutes)~~].

(b) Chapter 115, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8307c, Vernon's Texas Civil Statutes), is adopted except to the extent it is inconsistent with this article. For purposes of that Act, the individual agency shall be considered the employer.

(c) Nothing in this Act or the Texas Workers' Compensation Act (S.B. No. 1, Acts of the 71st Legislature, 2nd Called Session, 1989) shall be construed to authorize causes of action or damages against the state or any agency, institution, board, department, commission, or employee of the state beyond the actions and damages authorized by the Texas Tort Claims Act (Chapter 101, Civil Practice and Remedies Code).

(d) Wherever the word [~~words "association,"~~] "insurer[~~;~~]" [~~"subscriber,"~~] or "employer" is [~~are~~] used in the adopted law [~~laws~~], the word "state," "division" or "director," whichever is applicable, is substituted for the purposes of this article.

[~~(c) For purposes of Chapter 115, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8307c, Vernon's Texas Civil Statutes), the individual agency shall be considered the employer.~~]

SECTION 15.45. Section 17, Article 8309g, Revised Statutes, is amended to read as follows:

Sec. 17. COVERAGE FOR OUT-OF-STATE EMPLOYEES. An [~~Notwithstanding Section 19, Article 8306, Revised Civil Statutes of Texas, 1925,~~

~~as amended, an~~] employee who performs services outside this state is entitled to benefits under this article even if the person is hired or not hired in this state, does not work in this state, works both in this state and out of state, is injured outside this state, or has been outside this state for more than one year. An employee who elects to pursue remedies provided by the state or the District of Columbia in which an injury occurs is not entitled to benefits under this article.

SECTION 15.46. Section 1, Article 8309h, Revised Statutes, is amended to read as follows:

Sec. 1. DEFINITIONS. The following words and phrases as used in this article shall unless a different meaning is plainly required by the context, have the following meanings, respectively:

(1) "Political subdivision" means a county, home-rule city, a city, town, or village organized under the general laws of this state, a special district, a school district, a junior college district, a housing authority, a community center for mental health and mental retardation services established under Article 3, Texas Mental Health and Mental Retardation Act (Article 5547-203, Vernon's Texas Civil Statutes), or any other legally constituted political subdivision of the state.

(2) "Employee" means every person in the service of a political subdivision who has been appointed in accordance with the provisions of the article. A [~~No~~] person in the service of a political subdivision who is paid on a piecework basis or on a basis other than by the hour, day, week, month, or year, who is a patient or client of a political subdivision involved in vocational training, or who is a prisoner incarcerated by a political subdivision is not [~~shall be considered~~] an employee and is not entitled to compensation under [~~the terms of the provisions of~~] this article. Provided, however, a political subdivision may cover volunteer firefighters, policemen, emergency medical personnel, and other volunteers that are specifically named who shall be entitled to full medical benefits and the minimum compensation payments under the law. A political subdivision may cover an elected official as an employee by a majority vote of the members of the governing body of the political subdivision. A political subdivision may cover children who are in a program established by the political subdivision to assist children in rendering personal services to a charitable or educational institution as authorized by Subsection (b), Section 54.041, Family Code. Members of the board of trustees of a self-insurance fund created hereunder may provide coverage for themselves as well as their staff, including persons with whom it has contracted to perform staff functions, or for any other self-insurance fund created under The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes) by a majority vote of such members of the fund. No class of persons who are paid as a result of jury service or an appointment to serve in the conduct of elections may be considered employees under this article unless declared to be employees by a majority vote of the members of the governing body of a political subdivision.

(3) "Board" means the Texas Workers' Compensation Commission [~~Industrial Accident Board~~].

SECTION 15.47. Section 3, Article 8309h, Revised Statutes, is amended to read as follows:

Sec. 3. ADOPTION OF GENERAL WORKERS' COMPENSATION LAWS. (a) The following provisions of the Texas Workers' Compensation Act (S.B. No. 1, Acts of the 71st Legislature, 2nd Called Session, 1989) [~~laws as amended or as they may hereafter be amended~~] are adopted except to the extent that they are inconsistent with this article:

(1) Article 1, except the subdivisions defining "employer" and "employee";

(2) Article 2, except Sections 2.21 through 2.25;

(3) Chapter A of Article 3, except Sections 3.03, 3.04, 3.07, 3.08, 3.09, 3.10, and 3.11;

(4) Article 4, except Section 4.01(b); and

(5) Articles 5 through 10 [~~Article 8306, except Sections 5 and 28, and Articles 8307, 8307b, and 8309, Revised Civil Statutes of Texas, 1925, as amended;~~

[~~(2) Chapter 248, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 8306a, Vernon's Texas Civil Statutes);~~

[~~(3) Chapter 77, Acts of the 65th Legislature, Regular Session, 1977 (Article 8306b, Vernon's Texas Civil Statutes);~~

[~~(4) Chapter 208, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 8307a, Vernon's Texas Civil Statutes);~~

[~~(5) Chapter 115, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8307c, Vernon's Texas Civil Statutes), except that if the city provides by Charter or ordinance for ultimate access to the district court for wrongful discharge, Chapter 115, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8307c, Vernon's Texas Civil Statutes) is not applicable;~~

[~~(6) Chapter 358, Acts of the 64th Legislature, 1975 (Article 8307d, Vernon's Texas Civil Statutes); and~~

[~~(7) Chapter 179, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 8309a, Vernon's Texas Civil Statutes)~~].

(b) Provided that whenever in the above adopted law [~~laws~~] the word [~~words "association," "subscriber," or~~] "employer[;]" appears [~~or their equivalents appear~~], it [~~they~~] shall be construed to and shall mean "a political subdivision."

(c) Chapter 115, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8307c, Vernon's Texas Civil Statutes), is adopted except to the extent it is inconsistent with this article.

(d) A person may not bring an action for wrongful discharge under both Chapter 115, Acts of the 62nd Legislature, Regular Session, 1971 (Article 8307c, Vernon's Texas Civil Statutes), and Chapter 832, Acts of the 68th Legislature, Regular Session, 1983 (Article 6252-16a, Vernon's Texas Civil Statutes).

(e) Nothing in this Act or the Texas Workers' Compensation Act (**S.B. No. 1**, Acts of the 71st Legislature, 2nd Called Session, 1989) shall be construed to authorize causes of action or damages against a political subdivision or employee of a political subdivision beyond the actions and damages authorized by the Texas Tort Claims Act (Chapter 101, Civil Practice and Remedies Code).

SECTION 15.48. Section 5, Article 8309h, Revised Statutes, is amended by adding Subsection (c) to read as follows:

(c) By a majority vote, the governing body of a political subdivision may provide that during the time an employee of a political subdivision is receiving weekly compensation benefits under this article that employee may elect to receive previously accrued sick leave benefits, whether statutory or contractual, in an amount equal to the difference in the weekly payments of compensation under this article and the weekly compensation that that employee was receiving prior to the injury or illness resulting in the claim, with a proportionate deduction in the employee's sick leave balance. The sum of weekly payments of compensation under this article and the amount of sick leave paid by the political subdivision may not exceed the amount of weekly compensation that the employee was receiving prior to the illness or injury that resulted in the claim. This section may not be construed to limit in any way the medical benefits to be paid to the employee, and no such sick leave plan may require an employee to take sick leave benefits before receiving benefits under the Texas Workers' Compensation Act (**S.B. No. 1**, Acts of the 71st Legislature, 2nd Called Session, 1989).

SECTION 15.49. Section 9, Article 8309h, Revised Statutes, is amended to read as follows:

Sec. 9. FEDERAL AND STATE FUNDED TRANSPORTATION ENTITIES [~~CETA EMPLOYEES~~]. An entity that provides transportation

subsidized in whole or in part by and provided to clients of the Texas Department on Aging, Texas Commission on Alcohol and Drug Abuse, Texas Commission for the Blind, Texas Cancer Council, Texas Department of Community Affairs, Texas Commission for the Deaf, Texas Department of Human Services, Texas Department of Mental Health and Mental Retardation, Texas Rehabilitation Commission, or Texas Youth Commission is an eligible participant under Section 4 of this article, Chapter 1084, Acts of the 70th Legislature, Regular Session, 1987 (Article 715c, Vernon's Texas Civil Statutes), and The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes). [~~Notwithstanding any other provision of this law or any applicable workers' compensation law, an employee hired in accordance with the federal Comprehensive Employment and Training Act of 1973 shall be considered an employee of the federal Comprehensive Employment and Training Act prime sponsor, or its contractor or subcontractor, whichever assumes responsibility for disbursement of wages directly to the employee, and the "borrowed servant doctrine" shall not apply.~~]

ARTICLE 16. REPEALER

SECTION 16.01. The following laws are repealed:

(1) Article 4413a.2, Revised Statutes;

(2) Section 1, Chapter 29, General Laws, Acts of the 39th Legislature, Regular Session, 1925 (Article 6145a, Vernon's Texas Civil Statutes);

(3) Section 2, Chapter 29, General Laws, Acts of the 39th Legislature, Regular Session, 1925 (Article 6145b, Vernon's Texas Civil Statutes);

(4) Section 3, Chapter 29, General Laws, Acts of the 39th Legislature, Regular Session, 1925 (Article 6145c, Vernon's Texas Civil Statutes);

(5) Section 11, Chapter 502, Acts of the 45th Legislature, Regular Session, 1937 (Article 6674s, Vernon's Texas Civil Statutes);

(6) Section 16, Chapter 502, Acts of the 45th Legislature, Regular Session, 1937 (Article 6674s, Vernon's Texas Civil Statutes);

(7) Article 8306, Revised Statutes;

(8) Chapter 248, General Laws, Acts of the 42nd Legislature, Regular Session, 1931 (Article 8306a, Vernon's Texas Civil Statutes);

(9) Sections 1 and 2, Chapter 77, Acts of the 65th Legislature, Regular Session, 1977 (Article 8306b, Vernon's Texas Civil Statutes);

(10) Article 8307, Revised Statutes;

(11) Chapter 208, General Laws, Acts of the 42nd Legislature, Regular Session, 1931 (Article 8307a, Vernon's Texas Civil Statutes);

(12) Article 8307b, Revised Statutes;

(13) Chapter 358, Acts of the 64th Legislature, 1975 (Article 8307d, Vernon's Texas Civil Statutes);

(14) Sections 18, 18a, 19, 20, and 20a, Article 8308, Revised Statutes;

(15) Article 8309, Revised Statutes;

(16) Section 11, Chapter 229, Acts of the 50th Legislature, 1947 (Article 8309b, Vernon's Texas Civil Statutes);

(17) Section 17, Chapter 229, Acts of the 50th Legislature, 1947 (Article 8309b, Vernon's Texas Civil Statutes);

(18) Chapter 179, General Laws, Acts of the 42nd Legislature, Regular Session, 1931 (Article 8309a, Vernon's Texas Civil Statutes);

(19) Section 11, Chapter 310, Acts of the 52nd Legislature, 1951 (Article 8309d, Vernon's Texas Civil Statutes);

(20) Article 5.55A, Insurance Code;

(21) Article 5.76, Insurance Code; and

(22) Article 5.76-1, Insurance Code.

ARTICLE 17. TRANSITION; EFFECTIVE DATE; EMERGENCY

SECTION 17.01. NAME CHANGE. The name of the Industrial Accident Board is changed to the Texas Workers' Compensation Commission. Any reference

in the law to the Industrial Accident Board means the Texas Workers' Compensation Commission.

SECTION 17.02. TRANSFER OF CERTAIN PROGRAMS TO WORKERS' COMPENSATION COMMISSION. (a) The programs created under Article 5.76-1, Insurance Code, and administered by the State Board of Insurance are transferred to the Texas Workers' Compensation Commission on the effective date of this Act.

(b) The property and records in the custody of the State Board of Insurance that relate specifically to the implementation and enforcement of those programs shall be transferred to the Texas Workers' Compensation Commission not later than September 1, 1990.

(c) The programs administered by the Texas Department of Health, Division of Occupational Safety, as authorized by Chapter 201, Acts of the 60th Legislature, Regular Session, 1967 (Article 5182a, Vernon's Texas Civil Statutes), and in accordance with Section 7(c) and Section 24, Occupational Safety and Health Act of 1970 (29 U.S.C. Sections 656(c) and 673), including any statistical functions connected with those programs, are transferred to the Texas Workers' Compensation Commission at the expiration of the existing contract or contracts to administer those programs.

(d) The personnel, equipment, property, records, federal funds, and state matching funds in the custody of the Texas Department of Health that relate to the implementation and enforcement of those programs transferred by Subsection (c) of this section and any other programs related thereto shall be transferred to the Texas Workers' Compensation Commission. The transfer shall be accomplished by interagency agreement between the Texas Department of Health and the Texas Workers' Compensation Commission by September 1, 1990. For the contract period following the expiration of the current contract or contracts, the Texas Workers' Compensation Commission and the Texas Department of Health shall jointly contract with the United States Department of Labor for the administration of these programs. Appropriations to the Texas Department of Health that relate to the implementation and enforcement of programs transferred by this section to the Texas Workers' Compensation Commission are transferred and appropriated to that commission effective September 1, 1990.

(e) The Texas Workers' Compensation Commission shall adopt rules relating to the transfer of the programs assigned to that commission not later than September 1, 1990. Notwithstanding amendments and repeals made by this Act, programs and rules in effect on the effective date of this Act remain in effect and shall be enforced by the appropriate agency until provided otherwise by the rules of the commission, and the laws providing authority for those rules and programs are continued in effect for that time and purpose. Except as otherwise provided in this section, the commission shall assume full control over those programs not later than January 1, 1991.

SECTION 17.03. INITIAL POLICY STATEMENT. The policy statement required under Subsection (k) of Section 2.11 of the Texas Workers' Compensation Act, as added by this Act, must be filed 30 days after the effective date of this Act.

SECTION 17.04. ADMINISTRATIVE PENALTIES. Article 10 of the Texas Workers' Compensation Act, providing for the assessment of penalties and sanctions by the Texas Workers' Compensation Commission, applies only to a violation that occurs on or after the effective date of this Act.

SECTION 17.05. SUBSEQUENT INJURY FUND. The subsequent injury fund is created on the effective date of this Act. All money in and all liabilities of the second injury fund created under Article 8306, Revised Statutes, as of that date, are transferred to the subsequent injury fund.

SECTION 17.06. STUDIES. (a) The Texas Workers' Compensation Research Center shall conduct studies, in the context of the Texas Workers' Compensation system, relating to:

(1) the feasibility and effectiveness of vocational rehabilitation programs;

(2) the effectiveness of insurance deductibles;

(3) the effectiveness of arbitration as a method of dispute resolution;

(4) the cost-effectiveness of providing mandatory workers' compensation through a state-administered, employer-financed workers' compensation self-insurance program modeled on the current Texas Unemployment Insurance Trust Fund and Act but taxed on 100 percent of payroll; and

(5) the feasibility and effectiveness of alternative models for a state workers' compensation insurance fund.

(b) The research center shall report the results of these studies to the 73rd Legislature.

SECTION 17.07. SELF-INSURANCE. (a) For the period from January 1, 1993, through December 31, 1994, no more than 20 percent of the total unmodified workers' compensation insurance premiums in the state may be self-insured as provided in Article 3 of this Act.

(b) The initial board of directors of the Texas Certified Self-Insurer Guaranty Association created under Section 3.70, Texas Workers' Compensation Act, as added by this Act, shall be appointed by the Texas Workers' Compensation Commission.

(c) Notwithstanding the requirement imposed under Section 3.55(b), Texas Workers' Compensation Act, as added by this Act, the Texas Workers' Compensation Commission is not required to process an application for a certificate of authority to self-insure within 60 days of the receipt of the application by that commission until one year after the date of self-insurance.

SECTION 17.08. RATE ROLLBACK POLICY. (a) For all workers' compensation insurance policies issued on or after January 1, 1990, and through December 31, 1990, the premium rates charged shall be adjusted to reflect at least a four percent reduction in the overall premium rate effective on January 1, 1989, distributed among rate classifications in accordance with sound actuarial principles.

(b) For all workers' compensation insurance policies issued on or after January 1, 1991, and through December 31, 1991, the premium rates charged shall be adjusted to reflect at least a 10 percent reduction in the overall premium rate effective January 1, 1989, distributed among rate classifications in accordance with sound actuarial principles.

(c) For all workers' compensation insurance policies issued on or after January 1, 1992, and through December 31, 1992, the premium rates charged shall be adjusted to reflect at least a 15 percent reduction in the overall premium rate effective January 1, 1989, distributed among rate classifications in accordance with sound actuarial principles.

(d) The reductions in rates required by this section take effect only on a finding by the State Board of Insurance that the reductions would be consistent with the following factors:

(1) encouragement of the prevention of accidents;

(2) the taking into account of the peculiar hazard and experience of individual risks, past and prospective, within and outside the state, and all other relevant factors, within and outside the state;

(3) the reductions would be fair, reasonable, and not confiscatory as to any class of insurer authorized by law to write workers' compensation insurance in this state; and

(4) the statistical data or other information provided to justify the reductions indicates that approval of the reductions is reasonable.

(e) Any rates, rating plans, rate reductions, or changes in those rates, plans, or reductions must be published at least 15 days before the changes become effective.

SECTION 17.09. TRANSITION OF THE TEXAS WORKERS' COMPENSATION ASSIGNED RISK POOL TO THE TEXAS WORKERS' COMPENSATION INSURANCE FACILITY. (a) After the effective date of this Act:

(1) all obligations, liabilities, assets, investments, properties, equipment, accounts payable and receivable, and all other burdens and benefits under the ownership, jurisdiction, custody, and control of the Texas workers' compensation assigned risk pool are hereby transferred to or assumed by the Texas workers' compensation facility created by this Act;

(2) all members of the pool shall continue as members of the facility;

(3) all members of the governing committee of the pool shall continue in office until the initial appointment of members of the governing committee of the facility as provided for in this article;

(4) the State Board of Insurance shall implement Section 4.08 of Article 5.76-2 of the Insurance Code, as added by this Act, and award servicing contracts by January 1, 1991. All servicing companies of the pool shall continue as servicing companies of the facility until the board has promulgated rules and regulations pertaining to the selection of servicing companies as provided for in this article and companies have been selected;

(5) all rules, regulations, policy forms, endorsements, rates, rating plans, premiums, surcharges, and premium discounts applicable to the pool shall continue in effect until the board has altered them to conform to the provisions of Article 5.76-2 of the Insurance Code, as added by this Act;

(6)(A) all applicants who have filed their articles of incorporation and other documents with the State Board of Insurance after September 1, 1989, for the purpose of forming an insurance company and who, after being issued a certificate of authority, apply for an exemption from membership in the Texas workers' compensation assigned risk pool before December 31, 1989, which exemption is subsequently approved, and all insurance companies certified as exempt from membership in the Texas workers' compensation assigned risk pool pursuant to an order of the State Board of Insurance entered before November 14, 1989, or an order entered subsequent to that date pursuant to an application for exemption filed prior to that date, shall be exempt from membership in the facility. The exemption granted under this section shall continue unless:

(i) the insurance company violates any of the restrictions contained in the order certifying its exemption; or

(ii) the insurance company becomes engaged in writing workers' compensation insurance for members of the public generally;

(B) the board shall annually review the compliance of the companies with conditions in Paragraph (A) of this subdivision and that have been granted an exemption pursuant to an application that was filed with the State Board of Insurance prior to November 14, 1989. In conducting the review, the board may not construe insurance written solely for a parent and its wholly owned subsidiaries and wholly owned affiliates, for shareholders who directly or through an intermediate holding company have an ownership interest in the insurer, or for the subscribers to a reciprocal insurance exchange to be insurance written for the public generally.

(b) The provisions of Section 4.04 of Article 5.76-2 of the Insurance Code, as added by this Act, shall apply to operations of the fund beginning with calendar year

1990 and to any fund deficit arising out of calendar year 1989. Deferred balances from the years 1986, 1987, and 1988, occurring pursuant to the then existing plan of operation and board order, shall be levied on the member companies owing such deferred deficits and separately from assessments levied under Section 4.04 of Article 5.76-2 of the Insurance Code.

(c) Statutes, rules, regulations, and bylaws in effect at the time of issuance of Texas workers' compensation assigned risk pool insurance policies in force prior to the effective date of the repeal of Article 5.76, Insurance Code, shall continue to govern all aspects of such policies.

SECTION 17.10. TRANSITION OF DATA COLLECTION TO THE STATE BOARD OF INSURANCE. The State Board of Insurance, not later than April 1, 1990, shall develop a transition plan to transfer the function of data collection from certain agencies designated under Article 5.58, Insurance Code, to the State Board of Insurance. The plan shall include a statistical call, rules, and procedures for the collection of data and shall require the first report under Article 5.58A, Insurance Code, as added by this Act, to be made not later than April 1, 1991. The plan shall provide for the interim use of the designated agencies for data collection, as necessary, until January 1, 1993.

SECTION 17.11. BUDGET EXECUTION AUTHORITY. Notwithstanding Section 317.005(e)(4), Government Code, the Legislative Budget Board may adopt an order under Section 317.005, Government Code, affecting any portion of the total appropriation of the Texas Workers' Compensation Commission, the State Board of Insurance, or the Texas Department of Health if necessary to implement the provisions of this Act. This section expires January 31, 1991.

SECTION 17.12. COMMISSION AUTHORITY DURING TRANSITION. (a) The Texas Workers' Compensation Commission created under this Act shall begin immediately to adopt rules to implement this Act. The rules adopted under this section may not have an effective date before January 1, 1991.

(b) The commission shall delegate appropriate powers and duties to the executive director to administer the Crime Victims Compensation Act (Article 8309-1, Vernon's Texas Civil Statutes) and the workers' compensation law in effect prior to the effective date of this Act.

(c) The State Board of Insurance and the commission shall develop a plan to provide for the orderly transfer to the State Board of Insurance by September 1, 1991, of coverage and cancellation notices required to be filed with the commission by Sections 3.22, 3.25, 3.26, and 3.28 of this Act.

SECTION 17.13. APPROPRIATION TO ATTORNEY GENERAL'S OFFICE. Article I, Chapter 1263, Acts of the 71st Legislature, Regular Session, 1989 (the General Appropriations Act), is amended by adding the following appropriation to the Office of the Attorney General (page I-51):

31. In addition to the amounts appropriated above, there is hereby appropriated from the General Revenue Fund to the Office of the Attorney General the amount of $267,471 in fiscal year 1990 and $906,128 in fiscal year 1991 to be used for the purpose of compliance with the provisions of Senate Bill No. 1, Seventy-first Legislature, 2nd Called Session, 1989. Court costs and investigative costs recovered by the Office of the Attorney General are reappropriated to the Office of the Attorney General during the biennium of receipt to be used for court costs, expert witness fees, and other direct legal expenses related to litigation.

SECTION 17.14. APPROPRIATION TO THE TEXAS WORKERS' COMPENSATION COMMISSION. (a) All appropriations to the Industrial Accident Board in Article I (pages I-158 through I-162), Chapter 1263, Acts of the 71st Legislature, Regular Session, 1989 (the General Appropriations Act), and all

other provisions under those appropriations, are hereby repealed and replaced with the amounts appropriated in Subsection (b) of this section. Expenditures and encumbrances from Article I (pages I-158 through I-162), Chapter 1263, Acts of the 71st Legislature, Regular Session, 1989, should be considered as expenditures and encumbrances from the amounts appropriated in Subsection (b) of this section.

(b) Article I, Chapter 1263, Acts of the 71st Legislature, Regular Session, 1989 (the General Appropriations Act), is amended by adding, after the contingency appropriations to the Indian Commission (page I-158), the following appropriations and other provisions relating to the Texas Workers' Compensation Commission:

WORKERS' COMPENSATION COMMISSION

	For The Years Ending	
	August 31, 1990	August 31, 1991
1. Workers' Compensation Program:		
a. Administration	$ 977,782	$ 1,482,408
b. Staff Services	571,281	1,067,475
c. Records Maintenance	2,779,858	5,280,677
d. Claims Review	3,731,663	4,424,574
e. Hearings	1,422,662	7,149,157
f. Medical Review	330,217	1,772,738
g. Compliance and Practices		1,240,079
h. Public Information and Assistance	507,352	1,089,060
i. Ombudsman Office	63,287	304,722
j. Computer Equipment and Software	150,000	6,631,400
k. Construction, Repair and Renovation	887,000	
Total, Workers' Compensation Program	$11,421,102	$30,442,290
2. Crime Victims Compensation Act:		
a. Administration	$ 492,726	$ 490,522
b. Medical Cost Evaluation	45,246	45,381
c. Payment of Claims, estimated	20,200,000	21,800,000
Total, Crime Victims Compensation Act	$20,737,972	$22,335,903
3. Workers' Health and Safety:		
a. Health and Safety	$ 3,515,250	$ 4,355,860
b. State Risk Management	569,555	1,068,810
Total, Workers' Health and Safety	$ 4,084,805	$ 5,424,670
4. Research Center	$ 100,000	$ 600,000
Grand Total, Texas Workers' Compensation Commission	$36,343,879	$58,802,863
Method of Financing:		
General Revenue Fund	$12,615,300	$33,208,608
Federal Funds, estimated	7,014,967	6,241,967
Reappropriated Receipts, estimated	1,329,000	2,116,420
Crime Victims Compensation Fund No. 469, estimated	15,224,612	16,575,868
Research Center Fund	100,000	600,000
Interagency Contracts	60,000	60,000
Total, Method of Financing	$36,343,879	$58,802,863

Schedule of Exempt Positions and Authorized Per Diem

Executive Director	$ 71,400	$ 71,400
Assistant Executive Director	52,500	52,500
Director, Administration	61,400	61,400
Director, Hearings	61,400	61,400
Director, Compliance and Practices	61,400	61,400
Director, Data Services	61,400	61,400
Director, Medical Review	61,400	61,400
Director, Workers' Health and Safety	61,400	61,400
Director, Risk Management	61,400	61,400
Associate Director, 10	52,500	52,500
General Counsel	57,000	57,000
Member, Appeals Panel, UL	52,500	52,500
Hearings Officer, UL	52,500	52,500

1. APPLICABILITY OF GENERAL PROVISIONS. The appropriations made above to the Texas Workers' Compensation Commission are expressly made subject to the provisions of Article V of this Act; however, no funds appropriated by Section 130 of Article V of this Act may be used to provide a salary increase to employees of the Texas Workers' Compensation Commission.

2. TRANSFER AUTHORITY. The Texas Workers' Compensation Commission is hereby authorized to transfer funds appropriated hereinabove among items 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.h, 3.a., and 3.b.

3. DIR REVIEW REQUIRED. Pursuant to the authority granted by Article XVI, Section 69, of the Texas Constitution, none of the funds appropriated above shall be expended for the purchase, lease and/or lease-purchase of computer hardware, software and/or telecommunications equipment of any kind until:
   a. The agency has submitted a long-range plan and a complete inventory of all existing hardware, software, and telecommunication devices to the Department of Information Resources (DIR); and,
   b. The DIR has certified in writing that: (1) the terms of the purchase, lease or lease-purchase are the most cost-effective alternative; (2) the required services cannot be obtained through interagency contract with another state agency or agencies; (3) the requested hardware, software and/or telecommunication devices cannot be purchased from another agency; and (4) the agency has complied with efforts to purchase compatible hardware, software or telecommunication systems.

   The DIR shall adopt rules and procedures to govern the implementation of this provision. Such rules may include the waiver of the DIR review and certification for expenditures below certain limits, for emergency purposes, or after a designated time period has elapsed.

   The DIR will give due consideration to the acquisition of hardware, software or telecommunication systems by the Texas Workers' Compensation Commission which is compatible with that of the State Board of Insurance.

4. INTERNAL AUDITOR REQUIRED. From the funds appropriated above, the Texas Workers' Compensation Commission shall employ an internal auditor.

5. ACCOUNT AUTHORIZED. The Texas Workers' Compensation Commission is authorized to accept deposits for prepayment of the purchase of copies, record checks, and similar services and such deposits are hereby appropriated for the fiscal biennium beginning September 1, 1989. Deposits shall be maintained in a separate account in Suspense Fund 900 until the services are

provided and expended. Refunds of unencumbered deposits shall be provided upon written request.

6. REAPPROPRIATION OF MISCELLANEOUS FEES. All monies received and collected by the Texas Workers' Compensation Commission during the 1990-91 biennium are hereby reappropriated to the Commission.

7. POSITION CLASSIFICATION AUTHORITY. Funds appropriated above may be expended to employ personnel in only those classified position titles listed in Article V of this Act or in such other positions established and approved by the State Classification Officer for use by the Texas Workers' Compensation Commission.

8. AUTHORIZATION FOR CONSULTANT CONTRACT. In addition to the amount appropriated above, there is hereby appropriated from the General Revenue Fund the amount of $200,000 to the Industrial Accident Board or its successor agency for the purpose of contracting with a management consulting organization to perform the necessary personnel functions to assure the proper staffing of the Texas Workers' Compensation Commission by September 1, 1990. Not later than June 1, 1990, the Industrial Accident Board will coordinate with the State Purchasing and General Services Commission for the proper preparation, publishing, and evaluation of a request for proposal. It is the intent of the Legislature that the management consulting organization perform such services as writing of job descriptions, design of required forms, interview and selection of personnel and other activities that may be required to efficiently and properly staff the Texas Workers' Compensation Commission. New personnel are to be available for training during July and August 1990. It is anticipated that the services of the management consulting organization will be required for a period of ninety (90) days.

9. AUTHORIZATION FOR CONSULTANT CONTRACT. In addition to the amount appropriated above, there is hereby appropriated from the General Revenue Fund the amount of $200,000 to the Industrial Accident Board or its successor agency for the purpose of contracting with a management consulting organization to redesign the necessary data collection forms, to review and evaluate software packages of other states, including Wisconsin, and to recommend cost-effective and timely implementation of the Texas Workers' Compensation System by September 1, 1990. Not later than June 1, 1990, the Industrial Accident Board will coordinate with the State Purchasing and General Services Commission for the proper preparation, publishing, and evaluation of a request for proposal. It is anticipated that the services of the management consulting organization will be required for a period of not more than nine months.

10. APPROPRIATION FOR AWARDS EVALUATION. The amount of $291,099 is hereby appropriated to the Texas Workers' Compensation Commission for Awards Evaluation for fiscal year 1990.

11. REAPPROPRIATION OF UNEXPENDED BALANCES. Any unexpended balances of appropriations made by this Act for fiscal year 1990 are hereby reappropriated for fiscal year 1991 for the same purpose.

SECTION 17.15. APPROPRIATIONS TO STATE BOARD OF INSURANCE. Article I (page 162), Chapter 1263, Acts of the 71st Legislature, Regular Session, 1989 (the General Appropriations Act), is amended by adding the following provisions to the State Board of Insurance:

Appropriation Source, Workers' Compensation. In addition to the amounts appropriated above, there is hereby appropriated from the Insurance Operating Fund No. 36, $664,256 in fiscal year 1990 and $1,458,086 in fiscal year 1991 to be used for the purpose of compliance with the provisions of Senate Bill 1,

Seventy-first Legislature, 2nd Called Session, 1989. Such amounts are to be transferred to the appropriate program items.

Authorization for Consultant Contract. There is hereby appropriated from the Insurance Operating Fund No. 36, $300,000 for the purpose of contracting with management consulting organizations to perform: (1) a study of rate deviations by geographic regions, (2) a study to revise the classification of companies, and (3) the expansion of data collection activities to ensure compatibility with the Texas Workers' Compensation Commission.

SECTION 17.151. APPROPRIATIONS TO TEXAS DEPARTMENT OF HEALTH. Article II, Chapter 1263, Acts of the 71st Legislature, Regular Session, 1989 (General Appropriations Act), is amended by adding the following appropriation to the Texas Department of Health (page II-26):

47. INDUSTRIAL HYGIENE PROGRAM. In addition to amounts previously appropriated to the Texas Department of Health for the fiscal year ending August 31, 1991, there is appropriated from the General Revenue Fund to the Department the amount of $305,000 to be used for the purposes of the Industrial Hygiene Program.

SECTION 17.16. THE TEXAS WORKERS' COMPENSATION RESEARCH CENTER; FUNDING; MAINTENANCE TAX. (a) The research center established by the Texas Workers' Compensation Act (**S.B. No. 1**, Acts of the 71st Legislature, 2nd Called Session, 1989) shall be funded through the assessment of a maintenance tax collected on each certified self-insurer per year. The tax assessed under this section may not exceed one-tenth of one percent of the total tax base of all certified self-insurers as computed in Subsection (c) of Section 3.63 of the Texas Workers' Compensation Act, as added by this Act. The tax is in addition to all other taxes imposed on those self-insurers for workers' compensation purposes.

(b) The commission shall set the rate of the maintenance tax based on the expenditures authorized and the receipts anticipated in legislative appropriations. The tax on certified self-insurers shall be collected and paid in the same manner and at the same time as the self-insurer maintenance tax provided by Section 3.64 of the Texas Workers' Compensation Act, as added by this Act.

(c) Amounts received under this section shall be deposited in the state treasury to the credit of a special fund to be used for the operation of the research center.

SECTION 17.17. SEVERABILITY. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 17.171. EFFECT OF CERTAIN COURT DECISIONS. If any provision of Section 4.24 of the Texas Workers' Compensation Act, as added by this Act, is held unconstitutional in a final judgment that is not subject to appeal, the Texas Workers' Compensation Commission by rule shall adopt objective impairment guidelines similar to the guidelines published by the American Medical Association.

SECTION 17.18. EFFECTIVE DATE. (a) This Act takes effect January 1, 1991, except as provided in Subsection (b) of this section.

(b) Article 2 except Section 2.14, and Sections 17.01, 17.10, 17.12, 17.13, and 17.14 take effect April 1, 1990. Articles 9 and 10 take effect June 1, 1991. Chapter D of Article 3 takes effect January 1, 1993. Chapter C of Article 6 takes effect January 1, 1992.

(c) The change in law made by this Act applies only to an injury for which the date of injury is on or after the effective date of this Act.

(d) The Texas Workers' Compensation Commission created under this Act shall process claims for injuries occurring before January 1, 1991, in accordance

with the law in effect on the date that the injury occurred, and the former law is continued in effect for this purpose.

SECTION 17.19. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

MESSAGE FROM THE HOUSE

House Chamber
December 12, 1989

HONORABLE W. P. HOBBY
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.C.R. 28, Suspending the limitations on the Conference Committee on **S.B. 1**.

The House suspended all necessary rules and adopted the Conference Committee Report on **S.B. 1** by a non-record vote.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

RECESS

On motion of Senator Brooks, the Senate at 9:17 a.m. took recess until 11:15 a.m. today.

AFTER RECESS

The Senate met at 11:15 a.m. and was called to order by the President.

SENATE RESOLUTION 102

Senator Washington offered the following resolution:

WHEREAS, The Texas Senate takes great pleasure in congratulating Senator Eddie Bernice Johnson on the joyful occasion of her 54th birthday on December 3, 1989; and

WHEREAS, A native of Waco, this skillful member has served her constituents with the care and devotion that are necessary to ably address their concerns; and

WHEREAS, Educated at Texas Christian University and Southern Methodist University, she attended the College of Nursing of Saint Mary's College of the University of Notre Dame and received her diploma from Holy Cross Central School of Nursing; and

WHEREAS, In recognition of her exceptional abilities she was awarded honorary degrees from both Bishop College and Jarvis Christian College; and

WHEREAS, She has the distinction of being the first black woman from Dallas County to be elected to the Texas House of Representatives and served with great honor from 1972 to 1977; and

WHEREAS, Elected to this stately body in November, 1986, to represent District 23, she has continued to work for improvement in the areas that directly affect those who look to her for leadership; she brings her knowledge and experience to bear as a member of the Education, Finance, and Health and Human Services committees and chairs the Subcommittee on Finance of Health and Human Services; and

WHEREAS, Her long association with the Democratic Party gave her a chance to experience party politics first hand when she was a delegate to the Democratic National Convention in 1976 and 1984; and

WHEREAS, Recognized for her loyal support and hard work, she received a presidential appointment during the Carter Administration; and

WHEREAS, Active in nursing circles, she has served as vice-president of governmental and community affairs of the Visiting Nurse Association of Texas since 1987; and

WHEREAS, For her dedication and achievements she was selected for the Outstanding Community Service Award from the National Association for the Advancement of Colored People White Rock Chapter, 1983, and the Outstanding Citizenship Award, National Conference of Christians and Jews, 1985; and

WHEREAS, A devoted mother to her son, Dawrence, she is also a proud grandmother; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 71st Legislature, 2nd Called Session, hereby extend happy birthday greetings to Senator Eddie Bernice Johnson; and, be it further

RESOLVED, That a copy of this Resolution be prepared for her as an expression of high esteem and regard from the Texas Senate.

The resolution was read and was adopted viva voce vote.

SENATOR ANNOUNCED PRESENT

Senator Green who had previously been recorded as "Absent-excused" was announced "Present."

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1

Senator Brooks called from the President's table the Conference Committee Report on **S.B. 1**. (The Conference Committee Report having been filed with the Senate and read on Tuesday, December 12, 1989.)

POINTS OF ORDER

Senator Parmer submitted the following points of order:

POINT OF ORDER IN WRITING on violation of the 24-hour layout rule (1) for the time period before the last 48 hours of any session, or (2) for recodification bills in special sessions.

Mr. President, I would like to raise a point of order against further consideration of the Conference Committee Report on **S.B. 1** at this time on the grounds that the Conference Committee Report has not been furnished at least 24 hours before the Senate attempts to take any action on the report, which violates either Senate Rule 12.09(a) or Rule 12.09(b).

Senate Rule 12.09(b) specifically provides:

> (b) All conference committee reports on the general appropriations bill, tax bills, reapportionment bills and recodification bills must be reproduced and a copy thereof furnished to each member at least 48 hours before any action thereon can be taken by either House, if convened in regular session, and 24 hours, if convened in called sessions. (Emphasis added.)

The Senate Rules do not specifically define "recodification bills." The only other references that I know of in the Senate Rules are (1) Rule 12.07 (Conference Committees on Recodification Bills); and (2) Rule 7.11 (Format of Bills and Resolutions Reported by Committees), as relates to the bracketing and striking through of language sought to be deleted, and the underlining of language sought to be added, from which recodification bills are exempted. Neither of these rules provides any definition of what constitutes a recodification bill.

However, generally, a recodification bill is a bill which repeals the existing law in a particular subject area and restructures it by putting it into code form. The Conference Committee Report for **S.B. 1** repeals much of the existing law for workers' compensation (Article 16) and creates new law (Articles 1 through 11). A recodification bill can make nonsubstantive changes or can make substantive changes as provided in the Conference Committee Report for **S.B. 1**.

Additionally, Black's Law Dictionary (1979) defines codification as follows:

> The process of collecting and arranging systematically, usually by subject, the laws of a state or country, or the rules and regulations covering a particular area or subject of law or practice; e.g. United States Code; Code of Military Justice; Code of Federal Regulations; California Evidence Code. The end product may be called a code, revised code or revised statutes.

For these reasons I believe the Conference Committee Report is a recodification bill.

Mr. President, if you determine that the Conference Committee Report to **S.B. 1** is not a recodification bill, then Rule 12.09(a) still requires a 24-hour layout. Senate Rule 12.09(a) provides:

> (a) All conference committee reports on bills other than the general appropriations bill and tax, reapportionment and recodification bills must be reproduced and a copy thereof furnished to each member at least 24 hours before any action thereon can be taken by either House; provided, however, that the 24-hour delay on action by either House, as herein provided, shall not apply during the last 48 hours of any session. (Emphasis added.)

My office received the Conference Committee Report on Monday, December 11, 1989, at 9:20 p.m., as is demonstrated by the time on the attached copy of the sign-up sheet demonstrating proof of receipt of the report. Since the special session runs until midnight Wednesday, December 13, 1989, the last 48 hours of the session did not begin until 3 hours after my office received the Conference Committee Report. Rule 12.09(a) applies to special sessions since the rule states "any session."

For the reasons provided above, I request that the President rule consideration of the Conference Committee Report for **S.B. 1** out of order until at least 9:20 p.m. Tuesday, December 12, 1989.

RULING ON POINTS OF ORDER

The President overruled the point of order raised under Senate Rule 12.09(a) on the ground that the required 24-hour delay in action on conference committee reports does not apply after the forty-eighth hour prior to final adjournment is reached and that such hour was reached at 12:00 a.m. today.

The President overruled the point of order raised under Senate Rule 12.09(b) on the ground that **S.B. 1** does not constitute a "recodification bill" as that term is used in the rules, in that **S.B. 1** does not incorporate in one self-sufficing form the whole body of existing statutory law relating to workers' compensation.

POINT OF ORDER

Senator Parker raised a point of order against further consideration of Conference Committee Report on **S.B. 1** citing that according to Senate Rule 12.10 the section-by-section analysis was inadequate.

The President submitted the question to the Senate.

Question - Shall the point of order be sustained?

The Senate refused to sustain the point of order by the following vote: Yeas 8, Nays 23.

Yeas: Barrientos, Caperton, Dickson, Lyon, Parker, Parmer, Truan, Uribe.

Nays: Armbrister, Bivins, Brooks, Brown, Carriker, Edwards, Glasgow, Green, Haley, Harris, Henderson, Johnson, Krier, Leedom, McFarland, Montford, Ratliff, Santiesteban, Sims, Tejeda, Washington, Whitmire, Zaffirini.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1 ADOPTED

Senator Brooks moved to adopt the Conference Committee Report on **S.B. 1**.

The Conference Committee Report was then adopted by the following vote: Yeas 18, Nays 13.

Yeas: Armbrister, Bivins, Brooks, Brown, Carriker, Edwards, Glasgow, Haley, Harris, Henderson, Krier, Leedom, McFarland, Montford, Ratliff, Sims, Tejeda, Zaffirini.

Nays: Barrientos, Caperton, Dickson, Green, Johnson, Lyon, Parker, Parmer, Santiesteban, Truan, Uribe, Washington, Whitmire.

STATEMENT ON CONFERENCE COMMITTEE REPORT ON SENATE BILL 1

It is time to put in place legislation that will make real change in Texas' workers' compensation system to relieve the debilitating financial burden on Texas employers and to provide better and more equitable benefits to Texas' injured workers. The Conference Committee Report on **S.B. 1** will do that. As the Senate co-chair of the Joint Select Committee on Workers' Compensation Insurance, I feel it is important to make a statement regarding the workers' compensation reform bill this Legislature has just passed.

This legislation encompasses many of the recommendations of the Joint Select Committee and provides comprehensive reform of our workers' compensation system in many areas. We have a policy-making agency with a strong administrative head. We have an objective benefit system that ensures we get the right amount of money to the right people—the seriously injured worker. We have strong medical cost containment provisions and insurance rate regulation reform.

We had a provision to promote return to work through a requirement that employers rehire an injured worker. Those states with good, comprehensive workers' compensation programs include rehire as a central element. Workers' compensation should be a system to help the injured worker in every way—not just to get the worker a lot of money, but to get the worker back to work. Then, the system works for everyone. Unfortunately, opponents of **S.B. 1** negotiated to remove the failure to rehire provision due to a misunderstanding of the law as it is today. It is clear from the caselaw under the wrongful discharge statute that failure to rehire is not covered. Thus, we have returned to current law and removed the strongest provision in this legislation to promote return to work for the injured worker.

But, as far as this legislation takes us down the road to true reform, the amendments agreed to over the weekend stop us a step short of the reform we had sought. One of the major deficiencies identified by the research of the Joint Select Committee was that the agency decision carries no weight in an appeal to the court. That results in a lack of predictability, a lack of certainty, and a lack of consistency. A meaningful agency decision provides the incentive to fully develop the facts and resolve the issues in a meaningful hearing at the agency without the delay inherent in a jury trial.

The bill we have approved provides some meaningful restraints on the wide open trial de novo system we have today, including changes that allow the agency decision to be admitted and restrictions on evidence that may be introduced. This bill changes the trial of a workers' compensation claim in ways that are real and far-reaching. However, the amendments required to secure passage of the bill decrease the probability that our efforts in this area will solve all the problems identified by the Joint Select Committee. We must continue to work for a truly meaningful agency decision.

I believe this bill provides comprehensive reform. If problems related to dispute resolution continue, it is not because of the changes we have made, but because of the changes we have not made. But, it is time to move forward to relieve the burden on Texas employers and employees. It is my sincere hope that the Research Center and the Legislative Oversight Committee created under this legislation will provide the information and the impetus to complete the process begun in this historic legislation.

/s/Bob Glasgow
GLASGOW

MOTION IN WRITING

Senator Brooks offered the following Motion in Writing:

Mr. President:

I move that the President be authorized to appoint a committee of five (5) Members to notify the Governor that the Senate has completed its labors and is ready to adjourn sine die.

BROOKS

The Motion in Writing was read and was adopted viva voce vote.

Accordingly, the President appointed the following Committee to Notify the Governor: Senators Brooks, Glasgow, McFarland, Washington and Zaffirini.

MOTION IN WRITING

Senator Brooks offered the following Motion in Writing:

Mr. President:

I move that the President be authorized to appoint a committee of five (5) Members to notify the House that the Senate has completed its labors and is ready to adjourn sine die.

BROOKS

The Motion in Writing was read and was adopted viva voce vote.

Accordingly, the President appointed the following Committee to Notify the House: Senators Armbrister, Carriker, Green, Santiesteban and Tejeda.

HOUSE OF REPRESENTATIVES NOTIFIED

The Committee to Notify the House of Representatives that the Senate had adjourned sine die appeared at the Bar of the Senate and Senator Armbrister for the Committee reported to the Senate they had completed their assigned task.

The President discharged the Committee.

GOVERNOR NOTIFIED

The Committee to Notify the Governor that the Senate had adjourned sine die appeared at the Bar of the Senate and Senator Brooks for the Committee reported to the Senate they had completed their assigned task.

The President discharged the Committee.

PRESIDENT PRO TEMPORE AD INTERIM, SEVENTY-FIRST LEGISLATURE

Senator Brooks announced that Senator Washington had been elected to serve in the United States House of Representatives, representing District 18, Houston, and that upon the conclusion of his term in the Texas Senate, Senator Kent Caperton of Bryan would resume the office of President Pro Tempore Ad Interim, 71st Legislature.

MOTION TO ADJOURN SINE DIE

At 5:18 p.m. Senator Brooks moved that the Senate of the Seventy-First Legislature, Second Called Session, adjourn sine die upon the completion of administrative duties.

The motion prevailed.

BILL SIGNED

The President announced the signing in the presence of the Senate, after the caption had been read, the following enrolled bill:

S.B. 1 (Signed subject to Art. III, Sec. 49a of the Constitution)

MEMORIAL RESOLUTIONS

S.R. 99 - By Uribe: In memory of Ruben M. Torres, Vice-Chairman of the Texas Board of Pardons and Paroles.

S.R. 123 - By Brown: In memory of Fort Bend County Sheriff Gus George.

S.R. 124 - By Brown: In memory of Dora Elizabeth Stovall of Lake Jackson.

S.R. 126 - By Uribe: In memory of Ruth Eugenia Young McGonigle.

WELCOME AND CONGRATULATORY RESOLUTIONS

S.R. 122 - By Tejeda: Extending congratulations to Dr. Buckner Fanning on the 30th anniversary of his pastorate of Trinity Baptist Church in San Antonio.

S.R. 125 - By Brooks: Extending welcome to the members of the National Asbestos Council.

ADJOURNMENT SINE DIE

The President announced that the hour for final adjournment of the 2nd Called Session of the 71st Legislature had arrived.

Senator Brooks, at 6:05 p.m., December 12, 1989, moved that the Senate stand adjourned sine die in accordance with a motion previously adopted.

The President declared the 2nd Called Session of the 71st Legislature adjourned sine die.

APPENDIX

Signed by Governor
(December 12, 1989)

S.C.R. 5
S.C.R. 7
S.C.R. 8
S.C.R. 9
S.C.R. 10
S.C.R. 11
S.C.R. 13
S.C.R. 15
S.C.R. 17
S.C.R. 24
H.C.R. 15
H.C.R. 16
H.C.R. 19
H.C.R. 21
H.C.R. 24
H.C.R. 25
H.C.R. 26
H.C.R. 28
H.C.R. 30
H.C.R. 31
H.C.R. 32

Sent to Comptroller
(December 13, 1989)

S.B. 1

Sent to Governor
(December 13, 1989)

S.B. 1
S.C.R. 28

Signed by Governor
(December 13, 1989)

S.B. 1 (Effective January 1, 1991)

H.C.R. 35
H.C.R. 39
H.C.R. 40
H.C.R. 41
H.C.R. 42
H.C.R. 44
H.C.R. 47
S.C.R. 6
S.C.R. 14

Filed with Secretary of State
(November 20, 1989)

H.C.R. 1

(December 8, 1989)

H.C.R. 29

(December 11, 1989)

H.C.R. 46

Filed without Governor's Signature
(December 20, 1989)

S.C.R. 28